

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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:  
UNITED STATES OF AMERICA  
13-CR-00072

-against- :  
United States Courthouse  
Central Islip, New York  
JUSTIN KALIEBE,  
July 19, 2016  
Defendant. : 10:00 a.m.

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TRANSCRIPT OF FATICO HEARING  
BEFORE THE HONORABLE DENIS R. HURLEY  
UNITED STATES DISTRICT JUDGE

APPEARANCES:

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Proceedings recorded by mechanical stenography.  
Transcript produced by computer.

M O R N I N G   S E S S I O N

THE COURT: Good morning. If everybody will be seated. What is the schedule? Who is going to call the witness?

MR. CANTY: Good morning. The government will call Dr. Berrill and we have a task force officer from the FBI, and that will conclude the evidence the government presents here.

THE COURT: Do we think that will conclude all the evidence, or does that depend upon what the next two witnesses will testify to?

MR. LAPINTA: The latter. I hope it will but it may lend itself to a rebuttal witness.

THE COURT: That's fair enough.

Mr. Canty, why don't you call your witness.

MR. CANTY: Yes, your Honor. The government calls Dr. N.G. Berrill.

THE COURT: Good morning, sir. Remain standing and raise your right hands.

**N. G. B E R R I L L,**

called as a witness, having been first  
duly sworn, was examined and testified  
as follows:

THE COURT: If you would be seated.

1 DIRECT EXAMINATION

2 BY MR. CANTY:

3 THE COURT: If you could state your first name  
4 and spell your last name for the court reporter, please.

5 THE WITNESS: Dr. N.G. Berrill.

6 Q Dr. Berrill, what do you do for a living?

7 A I work principally as a forensic psychologist and I  
8 direct a group practice located in New York City and we  
9 have an office in Great Neck, referred to as the New York  
10 Center for Neuropsychology and Forensic Behavioral  
11 Science.

12 Q Briefly describe to the Court your educational  
13 background?

14 A I received my Doctorate in Clinical Psychology from  
15 Vanderbilt University.

16 Prior to that I attended graduate school at  
17 Columbia University, Barnard University.

18 Prior to that I obtained a bachelor's degree  
19 from University of Massachusetts at Amherst, and before  
20 that I was at Yale.

21 I also completed my internship at Sheppard Pratt  
22 in Maryland, Baltimore, Maryland area, and post-op at  
23 Georgetown Medical School, and the National Rehabilitation  
24 Hospital in Washington, D.C.

25 Q Do you specialize in any areas of psychology?

1 A Yeah, I do. Principally specialized in clinical  
2 forensic and neuropsychology.

3 Q Explain to the Court what forensic psychology is?

4 A Sure. Forensic psychology is the applications of the  
5 information and knowledge and research data obtained in  
6 the field of psychology, particularly clinical psychology,  
7 to forensic matters where there are legal questions, and  
8 to the extent to which psychological science can answer  
9 the questions, is what we do.

10 Q What is clinical psychology?

11 A The study of psychopathology, issues related to  
12 intelligence, human behavior. Typically looking at  
13 dysfunctional and pathological functions of behavior.

14 Q What about neuropsychology?

15 A Neuropsychology looks at brain behavior  
16 relationships, in evidence where there is evidence of  
17 brain impairment, injury to the brain, developmental  
18 problems, etcetera.

19 Neuropsychologist are trained to do evaluations  
20 and make inquiries to try to address, assess these  
21 disorders or dysfunctions to ideally, if possible, remedy  
22 these situations.

23 Q During the course of your professional career, have  
24 you ever been asked or called upon to prepare a report on  
25 behalf of a party in a criminal matter?

1 A Yes.

2 Q Approximately how many times have you done that?

3 A At this point many hundreds of times.

4 Q In preparing and producing those reports, do you work  
5 exclusively with either the government or defendants?

6 A No, I don't. Over the course of my career I've been  
7 hired on forensic matters by both the government and by  
8 defense counsel.

9 Q Did there come a time where you were asked to conduct  
10 a clinical evaluation of the defendant Justin Kaliebe?

11 A Yes, I was.

12 Q And in preparation for producing that report and  
13 conducting that evaluation, can you tell the Court what  
14 you did?

15 A Well, basically I received a packet of information  
16 from a U.S. Attorney concerning documents collected in  
17 connection to this case. Principally the indictment, and  
18 a slue of medical and clinical documents related to  
19 Mr. Kaliebe's background and history. I also looked at  
20 Dr. Bardey's psychiatric workup of the defendant and I  
21 think, in general, that that kind of covers it.

22 Q What was the objective of the report you were asked  
23 to prepare for the government?

24 A Well, the objective was to do a comprehensive  
25 evaluation of Mr. Kaliebe in connection to the instant

1 offense in order to determine whether or not there is  
2 discernible evidence of psychopathology, psychiatric  
3 illness, intellectual impairment that would have formed  
4 his involvement in the instant offense.

5 Q At any time that you were asked to produce this  
6 report, were you guided by the government towards what  
7 outcome they perceived as being beneficial to the  
8 government?

9 A Not at all.

10 Q October 19, 2015, did there come a time during that  
11 day you met with the defendant?

12 A I did.

13 Q Do you see the defendant anywhere in the courtroom  
14 today?

15 A Yes, I do.

16 Q Please point him out to the Court and identify him by  
17 an article of clothing?

18 A Sure. He's wearing a tan or a beige jump suit at  
19 this time.

20 MR. CANTY: I would ask the Court that the  
21 witness has identified the defendant, subject to the  
22 defense.

23 THE COURT: The record will so reflect.

24 Q Doctor, where did the meeting take place?

25 A The meeting took place in Brooklyn at the

1 Metropolitan Detention Center.

2 Q Describe to the Court your first witness with the  
3 defendant on October 19, 2015?

4 A The first visit was principally a clinical interview,  
5 an opportunity to spend several hours with him in order to  
6 obtain information about his background, his personal  
7 history, the problems he may have had as a kid, his family  
8 life, those kinds of issues, his pedigree, and there was  
9 some discussion about his religious thinking and his  
10 interests in Islam.

11 So basically it was a kind of get to know you  
12 and collect as much information as I could about the  
13 background, his background personally about the cases to  
14 some degree, and just to sort of break the ice and do  
15 that.

16 Q How long did that interview last?

17 A That was several hours.

18 Q And what was your initial impression of the defendant  
19 Justin Kaliebe?

20 A Well, you know, he came across as certainly pleasant.  
21 He was relaxed. He was quiet verbal. He was responsive  
22 during the interview. I didn't find that there was  
23 anything in terms of his behavior or presentation that  
24 caused me concern about his ability to understand what we  
25 were talking about.

1           He seemed to be verbal. He seemed to be bright,  
2           and was able to produce I thought cogent and direct  
3           responses to whatever questions I posed to him.

4           I really didn't notice in the course of my  
5           initial meeting with him at all any peculiarities in terms  
6           of behavior, personal behavior of peculiar qualities in  
7           terms of his verbal communication.

8           Q     During that first meeting, did you conduct any  
9           clinical tests of the defendant?

10          A     Not during the first meeting. I might have asked him  
11          to take a test, but he indicated that he didn't have  
12          glasses with him, and I told him since I had intended to  
13          return to do some more interviewing to get a little bit  
14          more deeply into his recollection related to the instant  
15          office, and to speak a little bit about his motivation  
16          concerning his involvement in the instant offense I gave  
17          him glasses so he could read the materials I gave him.

18          Q     After that first meeting, what did you do?

19          A     After the first meeting, what I did I do?

20          Q     Yes.

21          A     I took a look at my notes and I took a note where we  
22          were at in terms of the interview and where we progressed  
23          and hoped he would have his glasses the next time he  
24          returned because it was my intention not only to discuss  
25          the instant offense in some depth but to have him take

1 some psychological tests.

2 Q Did there come a time you met with the defendant a  
3 second time?

4 A Yes.

5 Q What did you specifically do at that second meeting?

6 A The second meeting we discussed in detail is his  
7 involvement or conversion to Islam. We spoke about that  
8 and the genesis or evolution of his involvement with the  
9 religion to becoming I suppose fundamental and moreover  
10 radicalizing to the cause of his Muslim faith.

11 After discussing that and some of the specifics  
12 and details associated with the case and ultimately his  
13 arrest and what had occurred after his arrest, I believe  
14 he took some psychological tests.

15 Q Do you recall what psychological tests you  
16 administered?

17 A He took an intelligence screening test referred to as  
18 the WASI, the Wechsler Abbreviated Scale of Intelligence  
19 and administered the MCMI, which is the Millon Clinical  
20 Multiaxis Inventory, Third Edition, a basically  
21 comprehensive psychological inventory which looks at  
22 specific psychiatric symptoms, psychiatric disorders, and  
23 it also looks at the possibility of personality disorder  
24 features, whether or not a personality disorder can be  
25 discerned from the data.

1 Q What were the results of the intelligence tests?

2 A It revealed Mr. Kaliebe was functioning principally  
3 with respect to verbal intelligence in the average range  
4 of intelligence with respect to performance type tests  
5 which is visual, motor type activities in the low average  
6 range, so you take the average of those and the estimated  
7 IQ, seems to suggest a low average to average functioning.

8 Q And with respect to the second test you gave him,  
9 what were the results of those tests?

10 A Well, the second test, number one, indicated that  
11 Mr. Kaliebe tended to exaggerate or over-endorse a number  
12 of the symptoms related to psychopathology. Nonetheless,  
13 you know, that gets controlled for the computer analysis,  
14 and essentially, if you will, a diagnostic profile gets  
15 punched out vis-a-vis a computer. It's a standardized  
16 test.

17 On the MCMI, I should say, there are several  
18 distinct diagnostic possibilities emerge.

19 Q What were they?

20 A Number one, that he may well be presenting with a  
21 generalized anxiety disorder.

22 Secondly, there was a possibility that he was  
23 demonstrating symptoms associated with a posttraumatic  
24 stress disorder.

25 Then thirdly in terms of personality

1 functioning, that he was presenting with the possibility  
2 certainly of a dependant personality disorder with  
3 avoidance, and if the Court will permit I'll look at my  
4 report so I get it straight.

5 THE COURT: Yes.

6 MR. CANTY: Your Honor, for the record, we have  
7 the report as Government Exhibit 106 that I'll ask to be  
8 moved in evidence on consent of the defendant.

9 MR. LAPINTA: So stipulated. Yes.

10 THE COURT: Very good.

11 MR. LAPINTA: What number?

12 THE COURT: 106 is received in evidence.

13 MR. LAPINTA: Thank you.

14 (Whereupon, Government Exhibit 106, received in  
15 evidence.)

16 Q This is a copy of your report.

17 Doctor, if you could take a look through that  
18 and let me know what page you are referring to, I'll put  
19 it up on the overhead?

20 A Sure. In looking at page 25 on the report, test  
21 results suggest a possibility certainly of a dependant  
22 personality disorder with avoidant depressive and  
23 self-defeating personality traits.

24 Last but not least, I mentioned there was  
25 certainly a record of this having been diagnosed with a

1 Kallmann's syndrome with possibly history of Asperger's  
2 syndrome, indicating of course the Asperger's syndrome is  
3 not incorporated with DSM-V, but nonetheless there was  
4 some discussion with that on the record.

5 Q Can you walk us through those three evaluations,  
6 those impressions, in layman's terms.

7 You talk about generalized anxiety disorder or  
8 posttraumatic stress disorder. What are we talking about  
9 that?

10 A A generalized anxiety disorder is almost as it  
11 suggests that someone has a significant amount of anxiety  
12 which perhaps are reaching clinical proportions, that is  
13 to say, they worry, they are nervous, they may experience  
14 physiologic symptoms, discomfort, physical discomfort.  
15 They may ruminate perhaps a bit or consider their flight  
16 and feel --

17 Q Is that inconsistent with an individual that is  
18 incarcerated on a serious crime?

19 A Not at all, no.

20 Q With respect to the second one, dependant personality  
21 disorder with avoidance, depressive and self-defeating  
22 personality traits.

23 What is that?

24 A In layman's terms that suggests there is a  
25 long-standing cluster of behaviors, I don't know if I

1 would call them symptoms, but an cluster of behaviors that  
2 perform behavior and personality and perhaps vocationally,  
3 etcetera.

4 In terms of dependant personality, you are  
5 talking about someone who may rely on others for  
6 acceptance, really seeks acceptance from others and really  
7 is fed by the need to be accepted and admired and  
8 appreciated by other people.

9 Avoidant personality characteristics typically  
10 suggest an individual has a hard time confronting their  
11 own emotionality, that when they have strong feelings or  
12 feelings that cause them to stress, they can just shy away  
13 from processing those feelings, they don't like to express  
14 them readily or deal with them.

15 Q And Kallman's syndrome with possible symptoms of  
16 Asperger's syndrome, what do you mean by that?

17 A Well for good recordkeeping, it seems to be  
18 unequivocal that that syndrome exists in his background  
19 and basically as I understand it this is a medical  
20 syndrome which reflects the fact that the onset of puberty  
21 is delayed, open to, I believe, it is a genetic disorder,  
22 that interrupts the onset of puberty and that is basically  
23 it.

24 There may be psychological sequela associated  
25 with it, but it's not a psychiatric diagnosis or

1 condition. It's really a physical condition.

2 Q With respect to the diagnostic impression, did any of  
3 these that you found affect the defendant's ability to  
4 understand right from wrong?

5 A Not at all. Not at all.

6 Q Did any of them affect the defendant's ability to  
7 understand the consequences of his actions?

8 A Not at all.

9 Q Okay. Now, after you gave him -- let me ask you  
10 this. In preparation for your second meeting with the  
11 defendant, did there come a time where you reviewed  
12 recordings of the defendant?

13 A Yes, I had received from the government a series of  
14 videotaped recordings which depict the defendant  
15 discussing with an undercover agent his interest in  
16 joining Al Qaeda, and there were a series of discussions  
17 that I did look at at the videos which reflected the give  
18 and take between Mr. Kaliebe and the undercover agent, and  
19 it was an awful lot learned by looking at this. It was  
20 quite informative.

21 Q Why was it important for you to review the  
22 statements?

23 A Often forensic psychiatrists have to speculate on  
24 behavior that occurred at some point in the past and to  
25 draw inferences based on present behavior as to the state

1 of mind in the past as to what an individual was involved  
2 in an instant offense, but rarely do you get a glimpse or  
3 are able to observe how the person comes across or how  
4 they conduct themselves during the time period when they  
5 were actually involved in the commission of the instant  
6 offense.

7 It's quite helpful to get a handle on that.

8 Q Is it fair to say that that is probably one of the  
9 most important pieces of evidence for lack of a better  
10 term you can use to determine what the defendant's state  
11 of mind was while he was committing this crime?

12 A Well, it's invaluable. We rarely have that.

13 You know, in dealing in hundreds and hundreds of  
14 cases over the years, you know, you rarely have an audio  
15 or videotape to get to see what the defendant was thinking  
16 and how they conducted themselves, what was the quality of  
17 their thought, what was the nature of their communication,  
18 what was the give and take between the defendant and  
19 another individual. So, yes, it was quite valuable and I  
20 think it provided a very clear understanding of his state  
21 of mind, his capabilities, and the way in which he  
22 conducted himself during this period of time.

23 Q Please describe to the Court what the defendant's  
24 demeanor was when you conducted those interviews?

25 A He was basically relaxed. He was verbal. He was

1 congenial. As I said earlier, he responded to interview  
2 questions and probes in an open manner.

3 I never found him to be overly defensive. He  
4 was never angry. He was never peculiar in his mannerisms  
5 or his verbalisms. He never impressed me when we were  
6 speaking as someone demonstrating frank, bizarre  
7 behaviors, unusual behaviors, awkward interpersonal  
8 behaviors.

9 He was quite informative when we spoke about his  
10 background and history, informative about the transition  
11 or evolution that he participated in, I guess, internal  
12 and psychological evolutions getting involved in the  
13 Muslim faith to, I guess, radicalizing. I felt that, you  
14 know, there was just nothing really remarkable about his  
15 presentation other than he was cooperative and pleasant to  
16 speak to.

17 He demonstrated a sense of human intuition and I  
18 thought that was important as well, and we got a chance to  
19 discuss his presentation.

20 Q Prior to meeting with him, did you have the  
21 opportunity to review a report produced by Dr. Bardey?

22 A I did.

23 Q Were there specific claims that were found in  
24 Dr. Bardey's report as to the interaction between the  
25 defendant and the undercover operative that you asked the

1 defendant about?

2 A Yeah, I did.

3 Q What were those specific examples that were mentioned  
4 in the Bardey report that you asked the defendant on?

5 A It was my understanding that Dr. Bardey never got to  
6 see the tapes or didn't review the tapes which reflected  
7 the conversations that occurred between Mr. Kaliebe and  
8 the undercover agent.

9 According to Dr. Bardey's reports, as recall, he  
10 quotes Mr. Kaliebe as saying something to the effect that  
11 he felt that he was being pressured by the undercover  
12 agent. I can't recall if he said he was being yelled at  
13 but certainly he felt he was under notable pressure by the  
14 agent to become involved in the instant offense, stick  
15 with the instant offense, plans to travel abroad in order  
16 to join Al Qaeda.

17 There was some mention about the undercover  
18 agent asking him for money or funds, something to that  
19 effect, and we did discuss, Mr. Kaliebe and I, did  
20 discuss. I asked him about it.

21 Q What did he tell you?

22 A He said that really wasn't the case, that he  
23 acknowledged in fact that there did come a time, not -- I  
24 think it was a day or two or three prior to his arrest  
25 where he actually had a meeting with the undercover agent

1 -- where he was absolutely asked by the undercover agent  
2 to reconsider his plans to join Al Qaeda. In other words,  
3 he was told specifically that there were other ways to  
4 participate in the Muslim faith and that he did not have  
5 to radicalize or go travel to Yemen about what was  
6 necessary. He acknowledged that occurred and then had his  
7 own explanation as to why he, nonetheless, proceeded to  
8 enact his plans to travel to join Al Qaeda.

9 Q What happened when he continued on?

10 A He told me two things. One was that he had made a  
11 commitment, a personal commitment to himself, to pursue  
12 his plan to join Al Qaeda, to the best of his ability,  
13 that that is to say that this was going to reflect his  
14 devotion to his faith and his commitment to Islam and to  
15 his solidarity with those individuals fighting abroad  
16 against those who would encroach upon Islam. So he talked  
17 about that. It was an important thing for him personally,  
18 philosophically.

19 And then he said something to the effect that  
20 while in fact the agent did give him an out and encouraged  
21 him to consider not going, he wasn't sure if this wasn't  
22 somehow kind of a test that he was being given, and that,  
23 you know, his true mental or his conviction was being  
24 tested or questioned, thus, he wanted to determine or not  
25 determine but at least demonstrate, I should say, that his

1 commitment was real, that it was honest, and that he had  
2 thought things through and that he was capable of making  
3 this type of decision and he understood the ramifications  
4 making such a decision.

5 Q Now, with respect to the recording you are talking  
6 about, that January 18, 2013 recording, did you watch  
7 that?

8 A I did.

9 Q And in the recording that was provided to you by the  
10 government, at any time in any of those recordings, did  
11 you see the undercover officer ever yelling at the  
12 defendant Justin Kaliebe?

13 A No, there was no yelling. It was a low key cordial  
14 back and forth. There was humor, there was perhaps --  
15 there was as I said a cordiality, a comfortable give and  
16 take. It was clear that Mr. Kaliebe knew this fellow or  
17 thought he knew this fellow and they discussed his  
18 commitment to joining Al Qaeda.

19 What was interesting too was that a sense of  
20 humor was displayed during the conversation, a little bit  
21 of joking and laughter. There were aspects of the  
22 conversation which were clearly ironic given what  
23 Mr. Kaliebe had to say about his commitment to going  
24 abroad, and he demonstrated an awareness that perhaps the  
25 FBI or CIA had infiltrated mosques and were probably

1 tapping peoples' conversations. And, you know, he talked  
2 about how that was a little distressing, upsetting how  
3 that stuff was happening, of course not realizing it was  
4 happening as we were discussing. But, nonetheless, what  
5 was also interesting to me, the undercover agent told him  
6 unequivocally several times that he had an out, that he  
7 would feel very guilty that Mr. Kaliebe were to be killed  
8 if he went abroad, hurt if he went abroad, and this is  
9 something that he did not want him to do, and to  
10 reconsider the possibility of devoting himself to being a  
11 Muslim here in the United States and practicing as a  
12 Muslim without getting involved in any kind of terrorist  
13 activity.

14 He also made the statement to Mr. Kaliebe,  
15 something to the effect of please don't do this for me.  
16 So he actually said don't do this for me.

17 This is why Mr. Kaliebe said to him I'm not  
18 doing this for you, I'm doing this because of my  
19 commitment to my beliefs and my political beliefs as they  
20 emerged with respect to being radicalized, again, a sort  
21 of ironic comment as uttered by Mr. Kaliebe in this  
22 discussion which is, even if they were to be apprehended  
23 and arrested in connection to his commitment to committing  
24 this offense he would rather spend his time in prison than  
25 to be seen as someone turning his back on Islam or not

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1 fulfilled his destiny to participate in fighting abroad as  
2 part of Al Qaeda.

3 So it was a very telling and very compelling  
4 conversation that occurred between the two, but at no time  
5 was there any browbeating, was there any kind of  
6 strong-handing verbally, psychologically. There was no  
7 manipulation by the agent to force him to participate.

8 I think even he went as far to say to  
9 Mr. Kaliebe at one point, even if you were to be arrested,  
10 you know, which you could be arrested, I think he said  
11 Kennedy Airport, I think it was mentioned on the tape, if  
12 I can recall, you can avoid any problems such as backing  
13 off. As I already said, he, Mr. Kaliebe determined that  
14 he was not going to do so and told him frankly, clearly,  
15 and was not under duress during the discussion.

16 Q With respect to that January 18, 2013 video, did that  
17 assist you in determining the ability of the defendant to  
18 understand his conduct and the consequences of what that  
19 conduct would be?

20 A Well, it certainly reflected an intellectual  
21 understanding what the ramifications in the meeting was  
22 for his decision to go abroad and fight with Al Qaeda.  
23 There was a discussion, the possibility of being killed.

24 There was, you know, discussion which you know  
25 reflected several dimensions that really could result in

1 certainly harm to Mr. Kaliebe, and yes, he did understand.  
2 He was not confused. There was no sense during the course  
3 of the conversation that he was baffled by what was said  
4 or didn't understand the intent of what was being said.

5 What was interesting to me too, he perceived  
6 from an emotional or affective perspective the facts that  
7 the undercover agent was saying I don't want to feel  
8 guilty if you should get hurt. That is important too in  
9 terms of understanding this notion that Mr. Kaliebe was  
10 demonstrating signs of autism or autism spectrum disorder  
11 or Asperger's because he was able to pick up on the  
12 affective dimension of what the agent was saying to him in  
13 expressing concerns he has for this guy.

14 Mr. Kaliebe accurately perceived that that was  
15 being said to him, that there was an affective or  
16 emotional component and he responded by making it  
17 perfectly clear he would not hold this man accountable, it  
18 was not his fault if he made this decision. This was his  
19 decision. So it was interesting.

20 Q Was that consistent with what you found during your  
21 interviews with the defendant?

22 A It really was. I didn't see anything in those tapes  
23 that I looked at. I didn't see anything in those tapes  
24 that was radically or grossly different from what I had  
25 observed in my interactions with Mr. Kaliebe. Again, as I

1 said earlier, when I spoke to Mr. Kaliebe, I found the  
2 conversation to flow in a normal fashion. He displayed a  
3 sense of humor. There was nothing tangential about the  
4 discussion, nothing obscure, peculiar, didn't go off in  
5 directions unusual or strange, so I did see a continuity  
6 in his presentation between what was captured on those  
7 tapes and what amounts to be two years later. So when I  
8 spoke to him in the federal prison --

9 Q When you spoke to him during those interviews, what  
10 did the defendant tell you about his willingness to fight  
11 and engage in violence?

12 A He told me that he understood that his involvement  
13 with Al Qaeda would put him quite possibly at odds with  
14 the U.S. military, the U.S. government, and that in that  
15 context that he would in fact be fighting against the  
16 United States government and the military and he  
17 understood that fully, but he felt that this is where the  
18 fight was being waged and that he could relate to the  
19 fight that was being waged and felt that his commitment to  
20 Islam and his commitment to his political philosophy  
21 required him to go forward with his plans to wind up in  
22 Yemen and join Al Qaeda.

23 I think he actually said that it was his goal.  
24 I think I'm quoting him directly, to hook up with Bin  
25 Laden at some point, that this was something that he had

1 thought about and had hoped might occur as a consequence  
2 of his involvement.

3 Q Now, did you determine during your evaluation whether  
4 or not the defendant had any glaring defects or  
5 intellectual deficiencies?

6 A During my conversation with him, there was no  
7 evidence of any glaring defects or deficiency. He seemed  
8 intellectually intact, his emotionality was properly  
9 regulated, he was pleasant, the conversation was flowing  
10 naturally, there were no gaps in the conversation and  
11 there was nothing peculiar about his verbalizations,  
12 thinking, interpersonal style, so, no.

13 Q Now, after you watched all of the videos, conducted  
14 the two interviews, let me ask you this question: The  
15 second interview, how long was that?

16 A Several hours at MDC.

17 Q After you conducted that second interview and  
18 reviewed all of the material that was provided to you, did  
19 you form an opinion to a reasonable degree of scientific  
20 certainty as to the defendant's mental state when he  
21 committed this crime?

22 A Yeah, I did.

23 Q And what was your opinion?

24 A Yeah. I felt that during his involvement in the  
25 instant offense, the commission of his crime, I did not

1 see any discernible evidence that he was demonstrating  
2 obviously psychiatric illness, that his realty testing was  
3 impaired, that he was demonstrating delusions,  
4 hallucinations, and his thinking was peculiar, that he  
5 used peculiar language, that his conduct was strange, that  
6 his thinking was odd, and there was just nothing there  
7 that I could see that I could attribute to any kind of  
8 obvious intellectual impairment, psychiatric illness, or  
9 developmental disability.

10 Q In your expert opinion, do you believe that the  
11 defendant fully appreciated and understood the nature and  
12 consequences of the conduct he engaged in and the  
13 consequences for those actions?

14 A I believe he did. I think he was able to verbalize a  
15 clear and complete understanding of the ramifications of  
16 what his involvement would mean, and to the extent that  
17 anyone can under the circumstances, he did not appear  
18 confused, he did not appear to be distraught, he did not  
19 appear to be demonstrating symptoms of psychiatric illness  
20 or other impairments, so, yeah.

21 MR. CANTY: Your Honor, may I have a moment.

22 THE COURT: Yes.

23 (Counsel confer.)

24 MR. CANTY: Nothing further. Thank you, your  
25 Honor.

**Berrill - Cross/LaPinta**

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1 THE COURT: Very good. Thank you.

2 Mr. LaPinta.

3 MR. LAPINTA: Thank you, your Honor.

4 CROSS-EXAMINATION

5 BY MR. LAPINTA:

6 THE COURT: Mr. LaPinta.

7 MR. LAPINTA: Thank you.

8 Q Good morning, Dr. Berrill. How are you?

9 A All right.

10 Q Dr. Berrill, I'll ask you a series of questions on  
11 cross-examination, and I ask that you answer my questions  
12 with either a yes, a no, or you are unable to answer yes  
13 or no.

14 Do you understand?

15 A I do.

16 Q Do you agree to do that, sir?

17 A Why not? Sure.

18 Q Dr. Berrill, you explained on direct examination that  
19 you have two components to your practice, so to speak.  
20 You have a component where you take part in forensic  
21 evaluations and you also have, I believe you said, a group  
22 treatment component, is that right, or individual  
23 treatment?

24 A Yeah, I didn't say that but --

25 Q Answer "yes or no," or if you can't answer it yes or

**Berrill - Cross/LaPinta**

311

1 no.

2 A I can't answer.

3 Q Is a component of your practice forensic evaluations?

4 A Yes.

5 Q Is a component of your practice treatment?

6 A Yes.

7 Q You've been employed by the United States government  
8 on numerous occasions as an evaluator, correct?

9 A Correct.

10 Q You also have other types of employment with the  
11 government, don't you?

12 A Yes.

13 Q Mr. Canty didn't ask you those questions on direct  
14 examination regarding your other contractual obligations  
15 with the government, did he?

16 A No.

17 Q You are contracted with the government to evaluate  
18 sex offenders in the federal courts; isn't that right?

19 A That's correct.

20 Q And as a component of that contract, you deliver to  
21 the government evaluations of defendants charged with sex  
22 offenses, correct?

23 A Correct.

24 Q And you make it a recommendation after an evaluation  
25 as to whether a sex offender is in need of treatment or

**Berrill - Cross/LaPinta**

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1 not, correct?

2 A Correct.

3 Q And if a defendant is in need of treatment, you are  
4 the one that provides the treatment on many occasions,  
5 correct?

6 A Correct.

7 Q And you are paid by the government for your  
8 evaluations of the defendants, correct?

9 A Correct.

10 Q And you are paid by the government for your treatment  
11 of defendants, correct?

12 A Correct.

13 Q So you are in fact evaluating defendants and  
14 determining treatment for which you would receive a  
15 monetary benefit from; isn't that right?

16 A Well, I don't know if I can answer like that.

17 Q Okay. So you are evaluating defendants and coming to  
18 the conclusion whether they need treatment or not when you  
19 are the provider of that treatment, right?

20 A Again, I can't answer -- I understand your  
21 implications, but a "yes" or "no" isn't possible.

22 Q So, in other words, would you agree with me that when  
23 you are evaluating sex offenders, you have a potential  
24 economic interest in rendering treatment?

25 A I would say no.

**Berrill - Cross/LaPinta**

313

1 Q You have no economic interest at all or stand to  
2 benefit economically by recommending treatment of a sex  
3 offender?

4 A I might.

5 Q Now you would agree that you derive a significant  
6 amount of income from your contract with the government?

7 A Correct.

8 Q Now, you are not a medical doctor, right?

9 A Correct.

10 Q You are a Ph.D., correct?

11 A Correct.

12 Q And you have obtained numerous degrees in the field  
13 of clinical -- in the field of psychology, but you've  
14 never completed a medical program of any sort, correct?

15 A Uhm, not exactly correct.

16 Q Let me direct it more particularly.

17 Have you ever been educated in the field of  
18 endocrinology?

19 A No.

20 Q Have you ever been educated in the field of types of  
21 medications that are given to individuals with chronic  
22 endocrine deficiencies?

23 A No.

24 Q And obviously as a Ph.D., you are not permitted or  
25 licensed to dispense medicine, right?

**Berrill - Cross/LaPinta**

314

1 A That has changed in the United States.

2 Q Well, it's a yes or no?

3 A Well, I can't answer it yes or no.

4 Q So as of right now are you permitted to prescribe  
5 medications?

6 A I'm not prescribing medication, no.

7 Q So the answer is no, correct?

8 A Correct.

9 Q You learned of a number of different medications that  
10 Mr. Kaliebe was prescribed in his teens and extending to  
11 the time when you were seeing him, correct?

12 A Correct.

13 Q You were told that he was prescribed testosterone?

14 A Correct.

15 Q As part of your evaluation of Mr. Kaliebe, did you  
16 consult with any particular experts in the field of  
17 endocrinology to understand this Kallman's syndrome more  
18 clearly?

19 A No.

20 Q Did you do any research with the internet or any  
21 other sources of information to educate yourself as to  
22 what Kallmann's syndrome is?

23 A Of course, yes.

24 Q And you would agree with me that Kallman's syndrome  
25 is a syndrome that is very, very uncommon?

**Berrill - Cross/LaPinta**

315

1 A I believe so, yes.

2 Q It's a syndrome that someone is born with, correct?

3 A Correct.

4 Q Not an acquired syndrome, correct?

5 A Correct.

6 Q And it's a syndrome that affects the human body's  
7 ability to naturally produce hormones, correct?

8 A Correct.

9 Q And as you know, I guess from your training and  
10 education, hormones are an incredibly important product of  
11 our bodily function, correct?

12 A Correct.

13 Q Without hormones, we as humans can't develop  
14 naturally in our growth cycles, correct?

15 A Correct.

16 Q And our growth cycles would not only impact on our  
17 physical development but also on our psychological  
18 development, correct?

19 A Potentially so.

20 Q Okay. So when someone hits puberty naturally by a  
21 function of the production of the natural hormone, that  
22 person is going through many changes in their life at that  
23 time, correct?

24 A Correct.

25 Q Their body is becoming bigger, correct?

**Berrill - Cross/LaPinta**

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1 A They grow, yes.

2 Q Their muscles are expanding and becoming bigger as  
3 well, correct?

4 A Sure.

5 Q And their brain as a result is developing at a faster  
6 pace than previous?

7 A I don't know if the brain.

8 Q What about their cognitive abilities -- withdrawn.

9 What about their maturation of their cognitive  
10 abilities? That is affected by hormones too, isn't it?

11 A Again I don't know about the maturation of cognitive.

12 Q Well, if you can answer it "yes" or "no," or if you  
13 are not able to answer it.

14 A Well, I'm not able to answer it.

15 Q In the course of your years as an evaluator, have you  
16 come across a patient that has suffered Kallmann's  
17 syndrome?

18 A Not that I can recall, no.

19 Q Okay. Now, what sources of information did you refer  
20 to about Kaliebe's syndrome to educate yourself as to what  
21 affect this would have on a young man?

22 A Well --

23 Q Let me ask this. Did you refer to any documents?

24 A Well, I read the reports.

25 Q It's a yes or no.

**Berrill - Cross/LaPinta**

317

1 A Yes.

2 Q Did you refer to documents?

3 A Yes.

4 Q Were you limited to what you were furnished?

5 A No.

6 Q So you read other material besides what you were  
7 given?

8 A Yes.

9 Q Did you read those materials from medical journals or  
10 publications?

11 A From the internet.

12 Q Sorry?

13 A From the internet.

14 Q Okay. Were they medical journals or writings of  
15 noted experts in the field?

16 A I don't know --

17 Q It's a yes or no?

18 A I don't know.

19 (Continued.)

20

21

22

23

24

25

**Burrell - Cross/Lapinta**

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1 CROSS-EXAMINATION

2 BY MR. LAPINTA: (Cont'd)

3 Q So you don't know who authored those materials that  
4 you read, is that right?

5 A Well, I saw their names.

6 Q Either yes or no.

7 A I can't answer it like that.

8 Q Now, Dr. Berrill, as an experienced evaluator, would  
9 you agree with me that your goal before you meet with the  
10 subject that you are evaluating is to find out as much as  
11 possible about that person, right?

12 A Yes.

13 Q The more you can find out about the person, the  
14 better position you are going to be in in concluding your  
15 evaluation, right?

16 A I would think so; yes.

17 Q To that end, you reviewed a whole bunch of material  
18 that the government gave you, correct?

19 A Correct.

20 Q You reviewed my submissions as Mr. Kaliebe's  
21 attorney, correct?

22 A Yes.

23 Q And you reviewed, I believe you mentioned the word a  
24 slew of other documents, right?

25 A Correct.

**Burrell - Cross/Lapinta**

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1 Q Those other documents were, would you agree, very,  
2 very extensive medical records that Mr. Kaliebe  
3 accumulated over the years, right?

4 A Yes.

5 Q You read all those?

6 A Yes.

7 Q And by virtue of reading them, do you feel that you  
8 have a sound understanding of his physical and  
9 psychological past?

10 A I don't know you what mean by "sound," but I think I  
11 certainly was more informed.

12 Q It's either yes or no or you can't answer.

13 A I can't answer it the way you are asking.

14 Q That's fine.

15 And you are aware that there are problems that  
16 were really developed at birth, right? He was born with  
17 some problems, right?

18 A Yes.

19 Q And you understood by records that he had  
20 developmental problems as he got older, correct?

21 A Correct.

22 Q He didn't meet the developmental stages as typical  
23 infants achieve, correct?

24 A Correct.

25 Q He had a speech impediment as well, correct?

**Burrell - Cross/Lapinta**

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1 A Correct.

2 Q That required therapy?

3 A Yes.

4 Q You read those records?

5 A I did.

6 Q You know that the speech problem continued until he  
7 was maybe in middle school or high school, correct?

8 A I'm not sure of high school, but yes, middle school  
9 for sure.

10 Q You can answer it yes or no or you are not able to.

11 But you are aware that during his childhood and  
12 early teen years, he had a problem with speech, correct?

13 A Yes.

14 Q You also learned from the records that he had serious  
15 social problems as well, correct?

16 A Correct.

17 Q Were you aware that as a child he had communicative  
18 deficiencies?

19 A I read that; yes.

20 Q And that he would often not associate with people on  
21 purpose, right?

22 A I don't know if we can answer it that way, but there  
23 were social problems.

24 Q It's either yes or no, right, or not able to answer?

25 A Not able to answer the way you are asking.

**Burrell - Cross/Lapinta**

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1 Q Did you read anything in the documents that you were  
2 given that Mr. Kaliebe would come home from school and  
3 kind of go to his room every day and not really come out  
4 much?

5 A Yes.

6 Q And did you learn from records, school records or  
7 other records that he was bullied at times at school?

8 A Yes.

9 Q And did you learn that throughout his childhood or  
10 adolescence, that he became excessive or forced or focused  
11 or repetitive on certain topics at times, did you?

12 A I don't know if I can answer it that way.

13 Q Did you learn that when he was younger he fixated and  
14 was kind of consumed by Harry Potter books?

15 A I believe so; yes.

16 Q What about the World Wrestling Federation? Did he  
17 have a consumption in that matter as well?

18 A I believe so, yes.

19 Q You are familiar with subjects that you evaluated  
20 that have had those type of compulsiveness with topics in  
21 the past, right?

22 A The way you are asking, I can't answer it.

23 Q Have you evaluated people that have had similar types  
24 of compulsions in the past?

25 A I don't know that I would call them compulsions. I

**Burrell - Cross/Lapinta**

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1 think the word is being applied wrong, but obsession.

2 Q Obsession. I will adopt that.

3 Have you evaluated persons with obsessions  
4 before?

5 A I have --

6 Q It's either yes or no.

7 A Yes.

8 Q Now, you weren't told by the government to just limit  
9 your evaluation by only the records, right, that you were  
10 given?

11 A No.

12 Q You could have done anything you want as a trained  
13 evaluator, right?

14 A Well, I don't know about anything I want.

15 Q So the answer would be no, then?

16 A Or I can't answer the way you are asking.

17 Q Better yet.

18 So there was no bar or limit on you in terms of  
19 referring to resources or people, right?

20 A Correct.

21 Q Mr. Canty or Mr. Durham never told you you can't call  
22 this person, you can't call that person, right?

23 A Correct.

24 Q And isn't it a fact that you never reached out to any  
25 family members to talk about Justin's development as a

**Burrell - Cross/Lapinta**

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1 child or teenager, right?

2 A That's correct.

3 Q You never reached out to any doctors that treated him  
4 in the past, correct?

5 A That's correct.

6 Q And you had that doctor information because you had  
7 those records, right?

8 A Correct.

9 Q You had the name of the doctor, right?

10 A Yes.

11 Q The address of the doctor, right?

12 A Yes.

13 Q The telephone number of the doctor, right?

14 A I believe so.

15 Q Didn't make any calls in that regard, correct?

16 A (No response.)

17 Q Now, on your direct testimony, you had explained to  
18 Mr. Canty that you employed two testing procedures, right,  
19 two standard testing procedures, correct?

20 A Correct.

21 Q And I believe those -- excuse me one moment.

22 That was the WASI test?

23 A Right.

24 Q You would agree that's a very common, popular test?

25 A Yes.

**Burrell - Cross/Lapinta**

324

1 Q You've used it repeatedly over your career as an  
2 evaluator?

3 A Sure. Yes.

4 Q And that's not the only WASI test that's available,  
5 is that right? There is another WASI test available,  
6 isn't there?

7 A I'm not sure what you are referring to.

8 Q You used the Abbreviated Scale of Intelligence,  
9 Second Edition, correct?

10 A Right.

11 Q There is another one that's out there, isn't there, a  
12 non-abbreviated one?

13 A It's not a WASI.

14 Q Is it a Wechsler or similar to that pronunciation?

15 A Yes.

16 Q How do you pronounce it?

17 A "Wex-ler."

18 Q Isn't there a more comprehensive Wechsler exam to  
19 administer for intelligence than the Abbreviated Scale  
20 that you conducted?

21 A Yes.

22 Q It's either yes or no.

23 A Yes.

24 Q You didn't use that one, right?

25 A Correct.

Burrell - Cross/Lapinta

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1 Q But by using the Abbreviated WASI, you came to the  
2 conclusion that he, Mr. Kaliebe, was of the lower average  
3 level of intelligence, correct?

4 A Lower average to average.

5 Q Using those two tests, you have come to some  
6 conclusions. One conclusion was that Mr. Kaliebe, and you  
7 used the word "possibly" suffers from generalized anxiety  
8 disorder, is that right?

9 A Correct.

10 Q And that's your word, right, "possibly"?

11 A Yes.

12 Q And you were asked by Mr. Canty whether it's common  
13 that inmates that are facing severe crimes have that type  
14 of anxiety. You said yes, right?

15 A Yes.

16 Q That's not the only reason why someone that you are  
17 evaluating may have that anxiety disorder, right?

18 A Correct.

19 Q And isn't it a fact that the records that Mr. Kaliebe  
20 -- that you reviewed actually mention the fact that he was  
21 nervous and anxious even as a young child, right?

22 A I believe so.

23 Q Wasn't facing any severe criminal charges then, was  
24 he?

25 A Not that I'm aware.

**Burrell - Cross/Lapinta**

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1 Q Are you aware he was ever charged with anything  
2 before these crimes?

3 A He indicated he had not.

4 Q The government didn't tell you he was charged with  
5 any crimes in the past, right?

6 A As I said, I'm not aware of any prior.

7 Q That would be yes, then?

8 A Correct.

9 Q So you can't tell us here and now with certainty that  
10 this anxiety disorder that you have opined about is caused  
11 or was caused by the fact that he is an incarcerated  
12 inmate facing a serious charge, correct?

13 A Well, I don't know that -- you are asking me a yes or  
14 no on that? I can't answer yes or no.

15 Q In other words, the anxiety may be something that is  
16 just natural in his personality, right?

17 A Could be.

18 Q You also came to the conclusion that he has dependent  
19 personality disorder, right?

20 A Test results suggests that.

21 Q And that he seeks acceptance from others, right?

22 A Correct.

23 Q Now, in the course of your evaluation here, you said  
24 that you listened and viewed some of the surveillance  
25 involved in this case, correct?

**Burrell - Cross/Lapinta**

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1 A Correct.

2 Q It's true obviously that you didn't listen to all of  
3 it?

4 A Correct.

5 Q And you listened to the portions of the tapes and  
6 recordings that the government gave you?

7 A Correct.

8 Q They didn't give you copies of all of them, right?

9 A I don't believe all.

10 Q So it's not like you had the option of kind of  
11 picking and choosing which days of surveillance or what  
12 hours or minutes to listen to, right?

13 A I do not pick and choose.

14 Q So that would be a yes then?

15 A Correct.

16 Q You listened to the tapes and recordings that they  
17 gave you, right?

18 A Correct.

19 Q You read my submission to the Court regarding our  
20 sentencing memorandum?

21 A Yes.

22 Q How many did I submit?

23 A I can recall one right now.

24 Q If I told you I submitted two, would that refresh  
25 your recollection?

**Burrell - Cross/Lapinta**

328

1 A I don't know if it would. I would have to go back  
2 and look.

3 Q Did you come to learn that I submitted a second  
4 memorandum?

5 A As I said, I don't recall.

6 Q Did you read my second memorandum to the Court that I  
7 submitted after your evaluation?

8 MR. CANTY: Objection. Asked and answered. He  
9 doesn't recall the second submission.

10 THE COURT: Overruled. You can answer it.

11 A Yeah, I don't recall that I saw that.

12 Q Did the government share with you certain recordings  
13 that I brought to the Court's attention in submissions?

14 A Not that I'm specifically aware of.

15 Q Did they give you recordings that I have mentioned to  
16 the Court as relevant in terms of the defendant's position  
17 in this case?

18 A Again, not that I'm aware.

19 Q You come to the conclusion in giving an opinion that  
20 Mr. Kaliebe was able to understand right and wrong, is  
21 that right?

22 A Yes.

23 Q Isn't it true that Dr. Bardey didn't state in his  
24 report that he was unable to determine right and wrong?

25 A I believe that's the case, yes.

**Burrell - Cross/Lapinta**

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1 Q And you come to the opinion as well that he was  
2 understanding and thinking normally at the time of his  
3 interactions with this undercover operative, correct?

4 A Yes.

5 Q And you are basing that on the portions of recordings  
6 the government gave you and your questions and interviews  
7 with Mr. Kaliebe?

8 A That's correct.

9 Q Now, you are aware, Dr. Berrill, that you met with  
10 Mr. Kaliebe two and a half years, even close to three  
11 years after he first interacted with the undercover  
12 operative, are you aware of that?

13 A Yeah.

14 Q And you are aware that during that three-year period,  
15 he was being administered regular dosages of testosterone,  
16 correct?

17 A Yes.

18 Q And you are aware that when he first met with the  
19 operative, is when he first was diagnosed with having this  
20 hormonal problem, right?

21 A I believe so; yes.

22 Q So after the injections of testosterone, you are  
23 aware he was getting injections, right?

24 A Yes.

25 Q After the injections of testosterone for a

**Burrell - Cross/Lapinta**

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1 two-and-a-half or three-year period, there is a lot of  
2 changes that have taken place in this young man from the  
3 time he interacted with this operative to when you saw  
4 him, right?

5 A I don't know, I can't answer that.

6 Q You read records, didn't you?

7 A I did read records, but you are asking me a question  
8 I can't answer.

9 Q Were you aware that when he first socialized at the  
10 mosque, he was prepubescent, were you aware of that?

11 MR. CANTY: Objection. Assumes a fact not in  
12 evidence.

13 MR. LAPINTA: The records.

14 THE COURT: I think it's in evidence but it  
15 hasn't been developed through this witness. So I'm going  
16 to -- I won't foreclose the line of inquiry, you can  
17 continue with the line of inquiry, but the objection to  
18 the last question is sustained.

19 Q You testified on direct examination that Kallmann  
20 Syndrome is delayed puberty. Those are your words, yes?

21 A No, not exactly.

22 Q Would you agree with me that Kallmann Syndrome is a  
23 syndrome where a person's natural body does not produce  
24 any hormones to bring them to the process of puberty, you  
25 know that, don't you?

**Burrell - Cross/Lapinta**

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1 A That's what the literature suggests.

2 Q Okay. It wasn't until he was given synthetic hormone  
3 as a treatment that he engaged or entered into puberty,  
4 correct?

5 A Correct.

6 Q And that's a process that the human body goes  
7 through, isn't it, puberty is a process?

8 A Yes.

9 Q It doesn't happen overnight, right?

10 A Correct.

11 Q In fact, it could happen over years, right?

12 A Several years, yes.

13 Q So in your view of the records, you are aware as a  
14 16-year-old, he hadn't entered puberty, right?

15 A I believe so.

16 Q And do you know how old he was, yes or no, when he  
17 first went to the mosque and met the operative?

18 MR. CANTY: Objection. It's a compound  
19 question, when he went.

20 MR. LAPINTA: I will withdraw it.

21 Q Do you know how old he was when he first went to the  
22 mosque, yes or no?

23 A I believe it was in 2010.

24 Q It's not yes or no, do you know how old he was?

25 A Approximately.

**Burrell - Cross/Lapinta**

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1 Q You would agree he was around 16 years old then?

2 A Correct.

3 Q And then the last interaction with the operative was  
4 around two and a half years later, right?

5 A Yes.

6 Q When he was 18 years old, right?

7 A Right.

8 Q And when you saw him, he was 20 years old, right?

9 A Correct.

10 Q And from the time he is 16 to the time that he is 20,  
11 when you see him, he was then taking testosterone that he  
12 did not have naturally produced when he was 16, right?

13 A I believe that's it, yes.

14 Q You said something on your direct examination,  
15 Doctor, that was interesting to me. You said that Mr.  
16 Kaliebe told you that his goal in fighting Jihad was to  
17 meet Osama bin Laden; is that right?

18 A I believe he said that --

19 THE COURT: Sorry, keep your voice up.

20 THE WITNESS: Sorry, your Honor.

21 A I believe he used the term hook-up with or meet Osama  
22 bin Laden, yes.

23 Q By hooking up, did you understand him to mean he  
24 wanted to meet or work for him?

25 A I think that was the implication.

**Burrell - Cross/Lapinta**

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1 Q And you are not a terrorism expert, are you?

2 A Not a the terrorism expert.

3 Q Did you do any research on your own about Osama bin  
4 Laden in terms of your preparation of your report or  
5 testimony here today?

6 A Not specifically on Osama bin Laden.

7 Q You are aware he was killed?

8 A I am aware of that.

9 Q Are you aware he was killed in May of 2011, sir?

10 A I don't know the year of his death.

11 Q Are you aware that he first met the operative in  
12 2013?

13 A In and around that time period, yes.

14 Q So from what we know of the death of Osama bin Laden  
15 taking place in May of 2011, he was dead at the time that  
16 Mr. Kaliebe was dealing with this operative, wasn't he?

17 A Based on those numbers I think we can safely assume  
18 he was dead, yes.

19 Q It is your sworn testimony here in this court that he  
20 told you it was his goal to meet up with bin Laden when he  
21 was dead, is that what you are saying?

22 A I believe he said something about that, yes.

23 Q Doctor, going back briefly regarding your two  
24 objective tests that you had Mr. Kaliebe perform --  
25 withdrawn.

**Burrell - Cross/Lapinta**

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1                   Is it your opinion that Justin Kaliebe suffers  
2   from Asperger's Syndrome?

3   A     I'm not convinced.

4   Q     It's a yes or no.

5   A     I'm not convinced that he does.

6   Q     Sorry?

7   A     I'm not convinced that he did.

8   Q     That would be a no?

9   A     That would be a no.

10   Q     And you are not an autism expert, are you?

11   A     I'm not an autism expert.

12   Q     You are not an Asperger's expert, are you?

13   A     Correct.

14   Q     But as a trained, experienced evaluator, is it fair  
15   to say that you did some research about autism?

16   A     Not only did I do research about autism.

17   Q     That would be a yes?

18   A     I can't answer it just yes.

19   Q     That's fine.

20                You did research about Asperger's?

21   A     Yes.

22   Q     Are you aware that there are a number of very  
23   specific screening diagnostic tools to measure autism  
24   Asperger's syndrome?

25   A     Yes.

**Burrell - Cross/Lapinta**

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1 Q One of those tools is what is called the autism  
2 quotient, isn't that right? Familiar with that test?

3 A I'm not specifically familiar with that test.

4 Q Never heard of it before?

5 A I don't recall.

6 Q What about the Social Responsiveness Scale, ever  
7 heard of that one?

8 A Again, I'm sure I recall that scale.

9 Q Have you heard of it?

10 A I might have.

11 Q That's a yes?

12 A It's a maybe.

13 Q What about Autism Diagnostic Interview?

14 A Again, not sure about that specific test. There are  
15 a host of tests.

16 Q Or the Autism Diagnostic Observation Schedule, ever  
17 heard of that one?

18 A I believe so.

19 Q You didn't apply any of those tests on Mr. Kaliebe,  
20 did you?

21 A That's correct.

22 Q Would you agree as a trained experienced evaluator,  
23 that whenever possible, you should use specialized  
24 testing?

25 A Can't answer yes or no.

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1 Q Fair to say that you didn't use any specialized  
2 testing procedures here regarding autism?

3 A That's correct.

4 Q Nor did you use any specialized testing regarding  
5 Asperger's Syndrome?

6 A That's correct.

7 Q In your opinion, Doctor, from what you have  
8 researched as an evaluator in this case, is it common for  
9 Asperger's individuals to have speech impediments?

10 A Speech impediments do exist sometimes, yes.

11 Q And as you testified before, Mr. Kaliebe had a speech  
12 impediment, didn't he?

13 A Not when I saw him.

14 Q Well, when he was a child?

15 A During his childhood, there is --

16 Q Yes or no?

17 A Childhood, yes.

18 Q Are you aware that it is common among Asperger's  
19 individuals to suffer from depression?

20 MR. CANTY: Objection.

21 THE COURT: I will sustain it as to the form.

22 Again, the Doctor -- in other words, you are basically  
23 asking him something he may or may not agree with. You

24 are asking in a fashion where depression is a necessary

25 element of this particular condition. So you might -- so

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1 the objection is sustained. If you want to ask him about  
2 is it typical somebody that suffers from this condition  
3 experiences depression, see what he says.

4 MR. LAPINTA: Form.

5 THE COURT: In any event, the objection is  
6 sustained.

7 Q Trying to remember what you just said to the  
8 question.

9 Is it typical for Asperger's patients to be  
10 depressed, in your knowledge and experience?

11 A I can't answer yes or no. Some yes, some no.

12 Q Are you familiar with a publication that is called  
13 The Journal of the American Academy of Psychiatry and the  
14 Law? Ever hear of that?

15 A Yes.

16 Q Would you agree that that is a noteworthy  
17 publication?

18 A I don't know if it's noteworthy, it's out there, it's  
19 commonly read.

20 Q Is it regarded in the psychological community as a  
21 publication that is credited among practitioners and  
22 evaluators?

23 A People are aware of the journal, people read it who  
24 do forensic work. I don't know what you mean by credited.

25 Q And you read my submission to the Court, you said, my

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1 sentencing memo?

2 A Yes.

3 Q Did you read an article I appended in that memorandum  
4 that's entitled, Asperger's Disorder and Criminal Behavior  
5 Forensic and Psychological Considerations?

6 A Yes, I did read it.

7 Q Are you aware that in that article, the authors state  
8 that depression is very common among Asperger individuals,  
9 do you remember reading that?

10 A I don't know if I remember reading that specific  
11 line.

12 Q Well, do you have my submission?

13 A I believe it's in my chart.

14 MR. LAPINTA: May I approach, your Honor?

15 THE COURT: Yes, sir.

16 Q I'm going to give you a copy, Dr. Berrill, of my  
17 sentencing memorandum. I will ask you to take a look at  
18 the very last exhibit there, please.

19 Do you see that article?

20 A Yes.

21 Q Why don't you refer to page 4. See page 4? You can  
22 refer to the highlighted portions?

23 A Yes.

24 Q See it states, Depression is commonly reported by  
25 Asperger's individuals?

**Burrell - Cross/Lapinta**

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1 A Yes, I do see that.

2 Q You can put it down.

3 Are you aware that it is common among Asperger's  
4 individuals to have compulsive intrigue with various  
5 topics?

6 A Again, obsessive, I would use the word.

7 Q I will adopt that.

8 A Yes.

9 Q You are aware he has had obsessions, we went through  
10 that already?

11 A Correct.

12 Q And in reading the article -- withdrawn.

13 Would you agree in terms of your understanding  
14 of Asperger's that Asperger individuals may engage in  
15 criminal behavior because of their extensive preoccupation  
16 with highly focused topics?

17 A That's what the article is promoting.

18 Q So you are aware of that literature out there -- let  
19 me finish first, then you can answer yes or no, if you  
20 can.

21 Are you aware that it's been published,  
22 particularly in this article in the journal, that you have  
23 acknowledged, that it is common among Asperger's patients  
24 to engage in criminal behavior because of their excessive  
25 preoccupation with highly focused topics?

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1 MR. CANTY: Objection.

2 THE COURT: I'm going to sustain the objection.

3 This witness has not indicated that he finds this  
4 particular article authoritative. Moreover, there is no  
5 other evidence that would indicate it is authoritative.  
6 So it's a difficult line of inquiry for this witness.

7 MR. LAPINTA: I understand that. Thank you,  
8 your Honor.

9 Q Dr. Berrill, would you agree with me this article is  
10 authoritative?

11 A I don't know that it is authoritative.

12 Q In your course of research about Asperger's that you  
13 said that you conducted here, have you learned that it is  
14 common among Asperger's children, children suffering from  
15 Asperger's, that they are bullied in school?

16 A That comes up in the literature.

17 Q It's either yes or no or not able to answer yes or  
18 no.

19 A Yes.

20 Q Yes?

21 A Sure.

22 Q You are aware that he was bullied, right?

23 A Yes.

24 Q And you are aware that -- well, in the course of your  
25 research, in preparation for today's testimony, in

**Burrell - Cross/Lapinta**

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1 conducting this evaluation, have you come to learn that  
2 Asperger individuals typically have average intelligence?

3 A Quite often average, above average and intellectual  
4 impairments are comorbid features. In other words, no  
5 single model that reflects the type of intelligence  
6 Asperger's patients or kids have.

7 Q So the answer would be yes?

8 A I don't know if it is yes. I guess I was, suggests  
9 it's more nuanced than that.

10 Q You are unable to answer it?

11 A Correct.

12 Q Doctor, as you have explained on direct examination,  
13 you do a lot of defense work as well, correct?

14 A Correct.

15 Q And you would agree that you have been employed on  
16 many, many occasions by criminal defense attorneys to  
17 develop mitigation in certain cases, correct?

18 A Correct.

19 Q Yes?

20 A Yes.

21 Q You have done many times, would you agree with that?

22 A I don't know what many is, but yes, it's been -- I  
23 have been asked to do those types of workups, sure.

24 Q And when you develop a mitigation evaluation for a  
25 defense lawyer, you are really trying to find relevant

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1 issues about a defendant that would lend to advocating for  
2 a lenient sentence, correct?

3 A I guess that's the definition of mitigation.

4 Q So that's yes?

5 A Yes.

6 Q And in doing so, you would want to understand  
7 somebody's background, right?

8 A Yes.

9 Q Their health issues, right?

10 A Correct.

11 Q Whether they suffer from any chronic problems, right?

12 A Correct.

13 Q Developmental issues, correct?

14 A Correct.

15 Q You would want to investigate somebody's family  
16 background, correct?

17 A Yeah.

18 Q Understand whether they have dysfunctional family  
19 history, correct?

20 A Yes.

21 Q Whether they come from broken families or not, right?

22 A Correct.

23 Q Whether there is a history of parental drug abuse or  
24 alcoholism?

25 A Correct.

**Burrell - Cross/Lapinta**

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1 Q Whether a parent is physically abusive or not?

2 A Correct.

3 Q Someone's ability to learn, maybe their requirement  
4 to attend special education, is that, in your opinion as a  
5 trained evaluator, something that would be mitigation?

6 A It depends.

7 Q And of course, obviously, psychological issues that  
8 could lend to mitigation, correct?

9 A Correct.

10 Q Maybe someone that has a social dependency issue,  
11 someone who is a follower, is that something that you  
12 think is relevant when determining criminal conduct?

13 A It could be.

14 Q And the age of someone when they committed a crime,  
15 right?

16 A Correct.

17 Q So would you agree that the younger somebody is in  
18 committing a crime, the more mitigation would lend to  
19 that, correct?

20 A I don't know --

21 Q Let me withdraw the question.

22 If someone is, let's say, 16, would that be a  
23 factor potentially in examining mitigation?

24 A It could be.

25 Q Now, in your report, Dr. Berrill, you make reference

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1 to a number of different topics of discussion that you  
2 engaged Mr. Kaliebe in, right?

3 A Correct.

4 Q And I would assume that if it's in your report, it's  
5 relevant, right?

6 A Yes.

7 Q And in addition to your conclusions, you considered  
8 the conclusions of other people, right -- let me withdraw  
9 it.

10 You considered the conclusions of his various  
11 treating doctors, right?

12 A I considered the reports that I read.

13 Q Which contained their conclusions, right?

14 A Clinical conclusions, not forensic ones.

15 Q What about conclusions from his prior treating  
16 psychiatrists, is that something you considered as well?

17 A In terms of diagnostic --

18 Q It's either yes or no.

19 A Can't answer it.

20 Q That's fine.

21 Now, regarding your factual explanation of  
22 topics that you discussed with him, you learned from Mr.  
23 Kaliebe that he was motivated to travel to Africa to join  
24 in warfare, right?

25 A Correct.

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1 Q And that he wanted to join the tribal forces that  
2 were fighting against the military, right?

3 A Correct.

4 Q And that you had asked him particular questions as to  
5 whether those forces included American forces or not,  
6 right?

7 A Correct.

8 Q And answered it could have included American forces,  
9 right?

10 A Correct.

11 Q He didn't tell you that his focus would be  
12 particularly against American forces, right?

13 A Correct.

14 Q In fact, never said anything about particularly  
15 engaging in warfare with any aspect of the United States,  
16 correct?

17 A I'm not sure I understand.

18 Q I will withdraw it.

19 He never said to you that his goal is to fight  
20 in warfare against the Army, the Navy, the Air Force or  
21 the Marines, did he?

22 A Not specifically, no.

23 Q And when you conducted this evaluation of Mr.  
24 Kaliebe, you read the accusatory instruments in this case,  
25 right?

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1 A Yes.

2 Q You read the complaints?

3 A Yes.

4 Q And would you agree with me nowhere in the complaint  
5 does it allege that Mr. Kaliebe would be targeting  
6 innocent citizens anywhere, right?

7 A I don't recall a mention of innocent citizens.

8 Q Contrasted to people who were fighting in military  
9 war, that's what he wanted to engage in, right?

10 A Correct.

11 Q Combatants in military war?

12 A Combatants, yes.

13 Q Never said to you in any regard that he wanted to be  
14 violent to innocent citizens, did he?

15 A He did not talk about innocent citizens.

16 MR. LAPINTA: One moment, your Honor, and I will  
17 finish up.

18 (Pause.)

19 Q In your evaluation of materials, did you come to the  
20 understanding that he suffers from very, very severe  
21 osteoporosis?

22 A I did read that, yes.

23 Q Sorry?

24 A I did read it.

25 Q Yes?

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1 A Yes.

2 Q Osteoporosis is a brittling of bones that could  
3 easily break?

4 A Yes.

5 Q He has had problems with brittle bones in the past?

6 A He told me, yes.

7 Q You read documents regarding his problem with  
8 physical coordination, have you?

9 A In the past, yes.

10 Q Problems with an unsteady gait, did you ever read  
11 that?

12 A Again, from childhood.

13 Q And problems with kind of simple motor skills as a  
14 child?

15 A As a child.

16 Q Did you read records that that continued as an  
17 adolescent?

18 A I don't recall if it continued through adolescence.  
19 He certainly did not complain of these problems being in  
20 the present.

21 Q Did you ask him?

22 A I asked him to --

23 Q Yes or no, did you ask him?

24 A Can't answer yes or no.

25 Q Lastly, you made reference to a video that you saw

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1 the government gave you where you explained that the  
2 undercover operative tried to dissuade Mr. Kaliebe from  
3 traveling overseas. Remember that portion of your  
4 testimony?

5 A I do.

6 Q And you said that was a very significant portion of  
7 material that you evaluated, right?

8 A Correct.

9 Q Because you concluded that that showed you that he  
10 was able to pick up on, I believe you said, personal cues,  
11 if I'm not mistaken?

12 A Affective.

13 Q Affective cues?

14 A Right.

15 Q Were you aware that he had been dealing with that  
16 particular undercover operative for approximately two  
17 years prior to that recording?

18 A I knew that.

19 Q Yes or no?

20 A I can't answer yes or no.

21 Q If I told you he was dealing with that operative for  
22 a two-year period prior to that recording, would you  
23 disagree with that?

24 A No.

25 Q Were you aware that over that two-year period he met

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1 with him on average three or four times a week?

2 A Again --

3 Q Any reason to disagree with that?

4 A No.

5 Q And would you have any reason to disagree that when  
6 he met with him three or four times a week over a two-year  
7 period, that much of the discussion was about him  
8 traveling to Yemen? Any reason to disagree with that?

9 MR. CANTY: Objection.

10 THE COURT: Sustained.

11 Q Are you aware that when the operative spoke to Mr.  
12 Kaliebe for an extended period of time, they would speak  
13 particularly about traveling to Yemen?

14 MR. CANTY: Objection.

15 THE COURT: Sustained.

16 Q In listening to the tapes and understanding the  
17 relationship between the operative and Mr. Kaliebe, are  
18 you aware that they often spoke about Mr. Kaliebe's  
19 travels to Yemen?

20 A I can't answer it the way you are saying it.

21 Q Okay.

22 Are you aware from the tapes that you listened  
23 to that the operative was instructing Mr. Kaliebe how to  
24 travel to Yemen?

25 A The way you are asking, I can't answer.

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1 Q Are you aware that the operative instructed Mr.  
2 Kaliebe how to obtain a passport?

3 MR. CANTY: Objection.

4 THE COURT: Overruled. I will permit it.

5 A I didn't see that on the tapes. Mr. Kaliebe did not  
6 indicate specifically to me that this was part of the  
7 information he received.

8 Q So the answer is no?

9 A I guess it's no.

10 Q So they didn't give you any recordings where the  
11 operative was instructing Mr. Kaliebe how to get a  
12 passport? Is that what you are saying?

13 A I don't recall specifically seeing that on the tape.

14 Q Do you recall seeing any portion of a recording video  
15 or audio where the operative was telling or educating Mr.  
16 Kaliebe how to obtain a visa?

17 A I would answer similarly, I did not see that.

18 Q What about how to obtain an airline ticket?

19 A I didn't see that.

20 Q What about how to save money?

21 A Same response, I didn't see that.

22 Q Or what about the operative asking Mr. Kaliebe to  
23 give him money so he could save it for his trip to Yemen,  
24 hear anything about that in the recordings?

25 A I did not see that in the recordings, no. I didn't

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1 see them in the recordings, and Mr. Kaliebe did not  
2 mention it.

3 Q Did you ask him?

4 A I believe I asked him something about money or giving  
5 this man money.

6 Q And do you think those topics were relevant to you in  
7 terms of evaluating what was going on in Mr. Kaliebe's  
8 head when the operative, three days beforehand, was  
9 convincing him not to go then? Is that relevant?

10 A I can't answer yes or no. I can answer in a more  
11 lengthy manner, not yes or no.

12 Q I believe you had said that Mr. Kaliebe explained to  
13 you whether he was unsure whether the operative's acts in  
14 convincing him not to go, whether it was a test or not, is  
15 that what you said?

16 A I believe that's what he did say to me, that was a  
17 thought that he had.

18 Q And did he explain to you that at that point in time  
19 he was operating under the understanding that the  
20 undercover was, in fact, an Al Qaeda member?

21 A I believe he believed he was, yes.

22 MR. LAPINTA: I have nothing further. Thank  
23 you, your Honor.

24 THE COURT: We will take a 15-minute recess. We  
25 will resume at ten after 12:00 and continue until ten of

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1 1:00, and then we will take a recess until 2:00.

2 See you all in 15 minutes.

3 (Continued on next page.)

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1 THE COURT: You can all be seated.

2 Is somebody getting the witness?

3 MR. CANTY: We are concluded with that witness,  
4 your Honor.

5 THE COURT: Oh, you have.

6 MR. CANTY: We are not going to have any  
7 redirect.

8 THE COURT: That's fine. So there's no  
9 redirect. That will conclude that witness.

10 Now there is going to be another witness.

11 MR. CANTY: Yes, your Honor.

12 MR. DUCHARME: Yes, your Honor.

13 Should we bring that witness in?

14 THE COURT: Yes.

15 MR. DUCHARME: The government calls detective  
16 Jody Almodovar.

17 (There was a pause in the proceedings.)

18 THE COURT: Sir, if you would remain standing  
19 for a moment and raise your right hand.

20 **JODY ALMODOVAR,**

21 having been duly sworn, was examined  
22 and testified as follows:

23 THE COURT: If you would be seated.

24 If you would spell your first and last name for  
25 the court reporter, please.

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1 THE WITNESS: First name is Jody, J-O-D-Y, last  
2 name Almodovar, A-L-M-O-D-O-V-A-R.

3 THE COURT: Very good.

4 DIRECT EXAMINATION

5 BY MR. DUCHARME:

6 Q. Good afternoon, sir.

7 A. Good afternoon.

8 Q. What do you do for a living?

9 A. I am a detective.

10 Q. What law enforcement agency do you work for?

11 A. New York City Police Department.

12 Q. How long have you been a detective with the New York  
13 City Police Department?

14 A. This August I will start my 24th year.

15 Q. 24th year?

16 A. That's correct.

17 Q. Where are you currently assigned?

18 A. I'm currently assigned to the Joint Terrorism Task  
19 Force.

20 Q. Generally what is the Joint Terrorism Task Force?

21 A. The Joint Terrorism Task Force is led by the FBI.

22 In the New York field office there's -- I think  
23 there are over 50 different agencies in that represent the  
24 Joint Terrorism Task Force, it's New York City Police  
25 Department, it's FBI, state police, federal parks police,

**Almodovar - Direct/Ducharme**

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1 city parks police, DI0, there's many different...

2 Q. And how long have you been on the JTTF, Detective?

3 A. Since 2003.

4 Q. Since 2003?

5 A. Yes.

6 Q. What are your duties and responsibilities as a task  
7 force officer on the JTTF?

8 A. Investigating domestic as well as international  
9 terrorism cases.

10 Q. Approximately how many counterterrorism  
11 investigations have you personally participated in during  
12 your time on the JTTF?

13 A. Over 100.

14 Q. Over a hundred?

15 A. Yes.

16 Q. Have you interviewed witnesses in those  
17 investigations?

18 A. Yes.

19 Q. Met with sources?

20 A. Yes.

21 Q. Have you viewed Jihadist and propaganda?

22 A. Yes, I have.

23 Q. Have you become generally familiar, Detective, with  
24 terminology that's associated with violent extremism in  
25 the terrorism context?

**Almodovar - Direct/Ducharme**

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1 A. Yes, I have.

2 Q. Detective, in a few minutes we are going to play some  
3 short clips of recordings in this case.

4 I want to go through with you some terminology  
5 and some context that might be helpful for those  
6 recordings.

7 Okay?

8 A. Yes.

9 Q. Generally, what is your understanding of the word  
10 Jihad in the context of counterterrorism?

11 A. Jihad in the context of counterterrorism is to take  
12 up arms and to fight.

13 MR. LA PINTA: Sorry, I couldn't hear.

14 A. To take up arms and to fight.

15 Q. Do you have an understanding of essentially what is  
16 the extremist argument relating to the obligations of a  
17 young Muslim with respect to Jihad?

18 A. It is one's obligation when an Islamic country is  
19 under attack or they are fighting that is an obligation to  
20 actually go to that place and to take up arms and align  
21 yourself with the other Muslims fighting.

22 MR. LA PINTA: I didn't hear, I'm sorry, the  
23 last portion of that.

24 A. To align yourself and fight with the other Muslims as  
25 one.

**Almodovar - Direct/Ducharme**

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1 MR. LA PINTA: Thank you.

2 BY MR. DUCHARME:

3 Q. And with respect to a particular term now, Detective,  
4 Kunya, K-U-N-Y-A, are you familiar with what that term  
5 means?

6 A. Yes.

7 Q. Can you please explain to the court very generally,  
8 what is a Kunya?

9 A. A Kunya is basically a nickname.

10 Many individuals when they have a Kunya, they  
11 are named after their eldest child, so if your child's  
12 name is Mohammed, Abu Mohammed, Abu meaning father of, Umm  
13 meaning mother of, a lot of times it's used so a mother  
14 doesn't have to reveal the true name, other times it can  
15 be Ibn, which is son of or, Ibna, which is daughter of.

16 So basically it's a nickname.

17 Q. Does a Kunya have different particular significance  
18 with respect to terrorist groups?

19 A. Yes.

20 Q. And what is that significance?

21 A. It's to hide your true identity.

22 Other times it associates you with a region or a  
23 country.

24 Q. Is there any hard and fast rule by how a Kunya is  
25 assigned to a particular person?

**Almodovar - Direct/Ducharme**

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1 A. No, not necessarily.

2 Q. During the course of your experience as a JTTF  
3 investigator here in New York, have you been involved with  
4 investigations of Americans who wanted to travel overseas  
5 to join terrorist groups?

6 A. Yes, I have.

7 Q. Including Americans on Long Island?

8 A. Yes, I have.

9 Q. And are you aware of cases in which Americans were  
10 actually successful in joining foreign terrorist  
11 organizations?

12 A. Yes.

13 Q. Can you please very generally give the court some  
14 summary of the cases that you are familiar with.

15 A. Bryant, B-R-Y-A-N-T, Neal, N-E-A-L, Vinas, V-I-N-A-S,  
16 another individual from Long Island Samir Ali Khan,  
17 S-A-M-I-R, A-L-I, K-H-A-N.

18 Another investigation that I was involved with  
19 three individuals from New York, from Queens was Zarein,  
20 Z-A-R-E-I-N, Ahmedzay, A-H-M-E-D-Z-A-Y, Najibullay Zazi,  
21 N-A-J-I-B-U-L-L-A-Y, Z-A-Z-I, and Adis Medujinin, A-D-I-S,  
22 M-E-D-U-J-I-N-I-N.

23 Q. Detective, has there been some publicity in the  
24 New York area about individuals who traveled overseas to  
25 join these groups?

**Almodovar - Direct/Ducharme**

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1 A. Yes.

2 Q. Specifically with respect to Mr. Vinas, can you very  
3 briefly tell the court what happened to Mr. Vinas?

4 A. Mr. Vinas was an individual from Long Island who had  
5 accepted Islam later in life.

6 He was born -- an American born and he actually  
7 went overseas and he successfully joined Al-Qaeda in  
8 Pakistan.

9 Q. Was he ever returned to the United States?

10 A. Yes, he was returned to the United States.

11 Q. What happened to him after he was returned to the  
12 United States?

13 A. After he was returned to the United States he ended  
14 up pleading guilty.

15 Q. Based on your experience, Detective, why are  
16 Americans appealing to foreign terrorist groups?

17 A. Americans --

18 MR. LA PINTA: I'm going to object, vague,  
19 ambiguous, relevance.

20 THE COURT: Well, that covers so much territory  
21 and I'm not so sure it's that germane for present  
22 purposes.

23 We are talking about a specific individual  
24 supposedly joining. What generally people join for is not  
25 of sufficient interest under 403 to warrant spending the

**Almodovar - Direct/Ducharme**

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1 time and, accordingly, the objection is sustained.

2 MR. DUCHARME: Very well, your Honor, we'll move  
3 on.

4 BY MR. DUCHARME:

5 Q. Detective, are you familiar with a terrorist  
6 organization called Al-Qaeda in the Arabian Peninsula?

7 A. Yes.

8 Q. And is that group also known as Ansar al Sharia?

9 A. Yes, it is.

10 Q. Can we use AQAP for short?

11 Where is AQAP based?

12 A. In the Arabian Peninsula.

13 Q. And are you familiar with any Americans, prominent  
14 Americans who have made it to AQAP?

15 A. Yes.

16 Q. Can you give us just a couple examples?

17 A. Samir Ali Khan, Anwar al Awlaki, those are the two  
18 most famous.

19 Q. Are you familiar with something called Inspire  
20 Magazine?

21 A. Yes.

22 Q. What's that?

23 A. That was a propaganda online periodical that was  
24 actually made by Samir ali Khan.

25 It was in the English language and it was

**Almodovar - Direct/Ducharme**

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1 actually made not only to inspire people from the west,  
2 from America, English speaking individuals to go over to  
3 Yemen, it also inspired them to fight.

4 It also inspired them to become suicide bombers.

5 Q. How is that magazine made available to readers?

6 A. You can go on the internet and Google it and it will  
7 come up.

8 Q. Turning to this particular case more specifically,  
9 Detective, do you have knowledge of the investigation  
10 involving the defendant Justin Kaliebe and an individual  
11 named Almarcus Zea?

12 A. Yes.

13 Q. Are you the case agent in this case?

14 A. No, I'm not.

15 Q. What's your relationship to the investigative team in  
16 this case?

17 A. I was assigned to the same team, CT 27, and I  
18 assisted in the investigations.

19 Q. Did you assist partially with this investigation?

20 A. Yes, a little bit.

21 Q. Have you reviewed a summary report or reports  
22 relating to the investigation in this case that were  
23 prepared by other members of the JTTF?

24 A. Yes, sir.

25 Q. Have you had conversations with other members of the

**Almodovar - Direct/Ducharme**

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1 task force in preparing to testify today?

2 A. Yes, I did.

3 Q. A moment ago you talked about a Kunya.

4 During the course of the investigation, did you  
5 learn whether or not the defendant in this case had  
6 adopted any Kunyas in his communications?

7 A. Yes.

8 Q. And what were some of those Kunyas?

9 A. Omar, Omar Alrusky, Abu Dujana Amriki.

10 Q. When you used the term Alruska and Almariki, what do  
11 those mean?

12 A. Indicating an ethnicity, Russian or American.

13 Q. Are you aware of whether Mr. Kaliebe had a  
14 codefendant in this case?

15 A. Yes.

16 Q. Who was that?

17 A. Marcus Zea.

18 Q. Can you please very briefly explain to the court how  
19 the JTTF first became aware of information that related to  
20 Mr. Kaliebe and his codefendant?

21 A. On January 4, 2012, the FBI, New York FBI was  
22 notified that an individual, a United States person,  
23 Marcus Zea, was traveling to Yemen and in traveling to  
24 Yemen he was going through Heathrow Airport in the UK and  
25 in Heathrow he was stopped by Federal Bureau of

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1 Investigation or -- federal officers, like border patrol.

2 And when they looked at his passport, his  
3 traveling papers, his passport, he didn't have the proper  
4 visa to enter into Yemen, his final destination.

5 Q. Very generally, after the task force learned that  
6 Mr. Zea had been attempting to go to Yemen, very  
7 generally, what did you do?

8 A. The FBI then interviewed Marcus Zea when he returned  
9 to the United States.

10 Q. I'm showing you what's in evidence as  
11 government Exhibit 104.

12 Do you recognize the two individuals in  
13 government Exhibit 104?

14 A. Yes.

15 Q. I'm going to indicate with my finger towards one of  
16 the individuals wearing a red and white head covering, you  
17 see that?

18 Who's that individual?

19 A. That is Justin Kaliebe.

20 Q. And indicating the individual with the black head  
21 covering, who is that?

22 A. Marcus Zea.

23 Q. Can you please explain to the court the general  
24 circumstances under which this photograph was taken?

25 A. That was July 14th in New York City at a protest.

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1 Q. The flag that's depicted in government Exhibit 104,  
2 are you familiar with that flag?

3 A. Yes, I am.

4 Q. Generally, what is that flag?

5 A. That flag is the shahada.

6 Q. What's the shahada?

7 A. The shahada is one of the foundations of Islam, the  
8 first pillar of Islam itself.

9 It's a statement. It's basically -- the  
10 definition is shahad is to bear witness, or testimony.

11 Q. I'm indicating to you in the upper left of  
12 government Exhibit 104 Mr. Zea is holding his index  
13 finger.

14 Do you have any understanding of the  
15 significance of that?

16 A. Yes.

17 Q. What's the significance of that?

18 A. There is one God.

19 Q. Detective, at some point after the task force learned  
20 about Mr. Zea, did Mr. Kaliebe also come to the attention  
21 of law enforcement?

22 A. Yes, he did.

23 Q. What is your understanding of the relationship  
24 between Mr. Zea and the defendant in this case?

25 A. They were close friends.

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1 Q. Do you know approximately when they met?

2 A. Prior to 2012, January 2012.

3 Q. And as part of the investigation into Mr. Zea's  
4 attempted travel to Yemen, did the JTTF employ undercover  
5 law enforcement officers?

6 A. Yes, they did.

7 Q. More than one?

8 A. Yes.

9 Q. Was one of those what's known as an online covert  
10 employee?

11 A. Yes.

12 Q. Can you please generally explain to the court what's  
13 the difference between sort of a visual UC and an online  
14 covert employee?

15 A. An online covert employee will actually never make  
16 face-to-face contact with a subject or a defendant.

17 They just communicate via the internet.

18 Q. And in this case with the two undercovers that were  
19 employed, what types of undercovers were they?

20 A. There was an actual -- as a person that I will refer  
21 to as UC 1, that's an actual person with the same identity  
22 as myself, same capacity doing investigations.

23 And UC 1 would actually meet in person.

24 Q. What about UC 2 in this case?

25 A. UC 2 is an FBI employee who was to communicate via

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1 communication, you know, telecommunication over the  
2 internet.

3 Q. And generally, Detective, what was the assigned role  
4 of UC 1 in the investigation of the defendant and Mr. Zea  
5 in this case?

6 A. UC 1 would be inserted just to find out the true  
7 intentions of the subject.

8 Q. In the course of the investigation, did UC 1 in fact  
9 have contact with the defendant?

10 A. Yes.

11 Q. Approximately when did UC 1 first directly engage the  
12 defendant?

13 A. Approximately April 4, 2012.

14 Q. Were meetings between UC 1 and the defendant  
15 recorded?

16 A. Yes.

17 Q. Approximately how many times did UC 1 meet in person  
18 with the defendant?

19 A. Over 100 times.

20 Q. And over what period of time?

21 A. That would be from April of 2012 to January of 2013.

22 Q. Now, were all of those meetings recorded?

23 A. Sometimes the equipment itself malfunctioned.

24 Q. Were there, in fact, more than one occasion when the  
25 recording equipment in this case failed to function?

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1 A. Yes.

2 Q. Have you reviewed, have you personally reviewed some  
3 of the recordings that UC 1 made in connection with your  
4 testimony today?

5 A. Yes, I have.

6 Q. Have you also reviewed reports relating to those  
7 recordings?

8 A. Yes, I have.

9 Q. We have a CD here I'm showing you that's been marked  
10 government Exhibit 101 through 103.

11 Are you familiar with the contents of this CD?

12 A. Yes, I am.

13 Q. Generally, what is contained on this CD?

14 A. Video recordings of UC 1 who I indicated earlier the  
15 person who made personal contact with Justin Kaliebe.

16 So it's between Justin and UC 1.

17 Q. And also in the recordings, Detective, is there a  
18 contemporaneous transcription of what's being said?

19 A. Yes, there is.

20 Q. Have you compared the transcripts with the recordings  
21 that you listened to?

22 A. Yes, I have.

23 Q. Do those transcripts fairly reflect what's being said  
24 on the recordings?

25 A. Yes, they do.

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1 MR. DUCHARME: Your Honor, at this time, and I  
2 believe with the consent of defense counsel, the  
3 government would offer government Exhibits 101 and 103,  
4 the three recordings with the contemporaneous  
5 transcription.

6 MR. LA PINTA: So consented.

7 THE COURT: You said 101 and 103, there is no  
8 102?

9 MR. DUCHARME: There is, Judge, I'm sorry.  
10 So 101 through 103.

11 THE COURT: As I understand it, there is no  
12 objection.

13 MR. LA PINTA: No objection.

14 THE COURT: Exhibits 101 through 103 are  
15 received in evidence.

16 (Whereupon, government Exhibits 101 through 103  
17 were received in evidence, as of this date.)

18 BY MR. DUCHARME:

19 Q. Turning to the first recording, Detective, and for  
20 the convenience of the parties I'm going to play from the  
21 laptop rather than the CD, but with respect to a June 4th,  
22 2012 event, before we roll this, can you please very  
23 generally for the court explain who's captured on this  
24 recording and very generally what it relates to.

25 A. Captured on this recording it's a conversation

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1 between who I referred to earlier as UC 1 and  
2 Justin Kaliebe.

3 MR. DUCHARME: Your Honor, we do have headphones  
4 available if the court so desires.

5 But we'll play from the speakers and I'll leave  
6 it to you, Judge, if you prefer to use the headphones.

7 THE COURT: There's been reference to  
8 transcripts.

9 He's gone through the proposed transcript. He's  
10 indicated that it's a fair and accurate representation of  
11 what you heard with respect to those conversations?

12 THE WITNESS: Yes, sir.

13 THE COURT: Is the transcript going to be made  
14 available as an aid to the court?

15 MR. DUCHARME: Yes, your Honor.

16 In fact, when we play the exhibit, you will see  
17 on the screen even when the audio is playing, the text  
18 will appear.

19 THE COURT: Okay.

20 MR. DUCHARME: We sort of put them together.

21 THE COURT: That's fine.

22 Thank you.

23 MR. LA PINTA: I stipulate to the authenticity  
24 of the transcripts.

25 I have seen these videos and recordings and I

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1 have no objection. I have seen and heard these videos and  
2 recordings. I have no objection.

3 THE COURT: Very good. Thank you, Mr. La Pinta.  
4 Why don't we try and see how it is.

5 MR. DUCHARME: Thank you, your Honor.

6 BY MR. DUCHARME:

7 Q. Detective, you see the June 4, 2012 audio clip came  
8 up?

9 A. Yes.

10 Q. I may pause from time to time if we encounter terms  
11 to seek your assistance with the terms.

12 But right now I'm going to play. Okay?

13 A. Yes.

14 (Tape played.)

15 (Tape stopped.)

16 THE COURT: What I would ask is if the witness  
17 could identify -- he indicated who the two participants in  
18 the conversation are, but I don't know who is speaking  
19 when with respect to what's on the screen.

20 MR. DUCHARME: Understood, your Honor.

21 BY MR. DUCHARME:

22 Q. Detective, to aid the court, we have two different  
23 shades of text here, and two different speakers.

24 Can you tell from the shading of the text and  
25 based on your review of the transcripts and the recordings

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1     who is who?

2     A.    Yes.

3                 As soon as you play it, I will indicate who is  
4     who.

5     Q.    Okay.

6                 (Tape played.)

7     A.    That is Justin highlighted in white and UC 1 is in  
8     yellow.

9                 (Tape stopped.)

10    BY MR. DUCHARME:

11    Q.    If we could pause for a second, who is the defendant  
12    speaking about here?

13    A.    He's talking about the American Samir Ali Khan.

14    Q.    And that was someone you referred to earlier?

15    A.    Yes.

16    Q.    What did Samir Ali Khan do?

17    A.    Samir Ali Khan, who once resided in New York,  
18    Long Island, he went over and he joined AQAP in Yemen and  
19    he's the one who started the periodical Inspire Magazine.

20    Q.    Thank you, Detective.

21                 MR. LA PINTA:  One moment, please.

22                 THE COURT:  Yes.

23                 (There was a pause in the proceedings.)

24                 MR. LA PINTA:  Thank you, your Honor.

25                 MR. DUCHARME:  Thank you, your Honor.

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1 (Tape played.)

2 (Tape stopped.)

3 BY MR. DUCHARME:

4 Q. Detective, are you familiar with the term bayat, they  
5 gave bayat?

6 A. Yes.

7 Q. What does that mean?

8 A. That's to pledge allegiance.

9 (Tape played.)

10 (Tape stopped.)

11 BY MR. DUCHARME:

12 Q. Detective, do you know who Omar Farook Abumataallab?

13 A. Yes.

14 Q. Who is that?

15 A. He is also known as being the underwear bomber for  
16 AQAB.

17 Q. And very briefly what did he do?

18 A. He joined AQAB and he had gone for training and he  
19 actually had plastic explosives within his undergarment.

20 And he was a passenger on a plane and he tried  
21 to detonate the plastics while in flight.

22 Q. Thank you, Detective.

23 (Tape played.)

24 (Tape stopped.)

25

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1 BY MR. DUCHARME:

2 Q. Detective, now turning your attention to what's in  
3 evidence as government Exhibit 102, this is a shorter clip  
4 from June 25, 2012.

5 Are you familiar with that clip?

6 A. Yes.

7 Q. Can you please explain to the court just very  
8 generally to set the setting, what does the June 25th,  
9 2012 recording address?

10 A. That's a recording between UC 1 and Justin Kaliebe,  
11 once again.

12 It's a recording and they are listening to a  
13 propaganda media part that was by Abu Mansur Alariki and  
14 it was entitled lessons learned.

15 Q. Does it review any particular event?

16 A. Yes.

17 Q. What event does it deal with?

18 A. It talks about an individual known as Abu Dujana  
19 Corisana.

20 Q. And who was Abu Dujana?

21 A. He was an individual who was actually born -- big  
22 family, in Kuwait. He was a twin. He had, like, I think  
23 eight different siblings.

24 When the invasion took place they actually --  
25 the whole family migrated to Jordan. That's where he

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1 started his education middle school, graduated with honors  
2 and he actually went on to medical school in Turkey.

3 That's where he met his future wife.

4 He had two kids and he was a practicing medical  
5 doctor.

6 Q. What did he do?

7 A. He was actually arrested for terrorism or picked up  
8 by Jordanian intel services and during the interviews he  
9 actually tricked the intel service into thinking that he  
10 was cooperating with them.

11 Q. Did he commit some type of attack?

12 A. Yes.

13 Later on he became a suicide bomber where he  
14 killed individuals.

15 Q. Who did he kill?

16 A. He actually killed seven Americans.

17 Q. Approximately when did that take place?

18 A. That was December 30th of 2009.

19 MR. DUCHARME: Now for the record playing what's  
20 in evidence as government Exhibit 102.

21 (Tape played.)

22 BY MR. DUCHARME:

23 Q. This voice talking, where is that voice coming from?

24 A. That's the internet.

25 Q. That's the propagandist?

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1 A. That's the propagandist, yes.

2 Q. If you would identify for the court who is UC 1 is  
3 and who is the defendant when they start speaking?

4 A. Right there, that would be Justin speaking that's  
5 highlighted in yellow.

6 (Tape stopped.)

7 BY MR. DUCHARME:

8 Q. Now, Detective, earlier you talked also about the  
9 role of a second UC, an online employee?

10 A. Yes.

11 Q. Were there communications between --

12 THE COURT: Excuse me.

13 What we are going to do at this point, we are  
14 going to recess. I have a judges' meeting from 1 to 2.  
15 We will resume at ten after 2.

16 MR. DUCHARME: Very well, your Honor.

17 THE COURT: We'll see you all after lunch at ten  
18 after 2.

19 MR. DUCHARME: Thank you, Judge.

20 MR. LA PINTA: Thank you, your Honor.

21 (Luncheon recess.)

22 (Continued on next page.)

23

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**AFTERNOON SESSION**

THE COURT: Good afternoon, everybody.  
If you would all be seated. We'll continue with  
the direct.

MR. DUCHARME: Thank you, your Honor.  
BY MR. DUCHARME:

Q. Detective, before the break we were talking about the  
role of an online undercover in the investigation.

Do you recall that?

A. Yes, I do.

Q. Did the online undercover actually communicate with  
the defendant during the course of the investigation?

A. Yes, he did.

Q. Did those communications include e-mail?

A. Yes, they did.

Q. I'm showing you government Exhibit 105, and we'll  
offer this.

MR. DUCHARME: I believe this is in on consent.

MR. LA PINTA: Yes.

BY MR. DUCHARME:

Q. Detective, can you see this on your screen in front  
of you?

A. Yes, I can.

Q. And just very generally, can you explain to the court

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1 when was this e-mail sent?

2 A. December 2012.

3 Q. December 2012?

4 A. Yes.

5 Q. Who was the author of the e-mail?

6 A. John Brown.

7 Q. Do you have an understanding of who John Brown is?

8 A. Yes.

9 Q. And who is John Brown?

10 A. Justin Kaliebe.

11 Q. How do you have that understanding?

12 A. He spoke to the other undercover in person regarding  
13 that.

14 Q. Who did the defendant send the e-mail to?

15 A. Barry Barber.

16 Q. Do you have an understanding of who that was?

17 A. Yes.

18 Q. Who was that person?

19 A. That was the FBI employee, the online undercover.

20 Q. Can you say that, again, I'm sorry.

21 A. The online undercover or the OCE.

22 Q. And who did the online undercover represent himself  
23 to be?

24 A. The online undercover, his story was that he was a  
25 facilitator over in Yemen.

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1 Q. A facilitator --

2 A. For AQAP.

3 Q. And directing your attention to the first paragraph,  
4 we are not going to go through all of this in the interest  
5 of time, if I begin here, you see where my pen is on the  
6 overhead about halfway through the first paragraph for the  
7 record.

8 A. Yes.

9 Q. Could you please read into the record that portion of  
10 the e-mail from the defendant to the online undercover.

11 A. Can I read off of a copy that I have or a copy that  
12 you provide this way I can speak into the microphone.

13 Q. That's fine, Detective.

14 You have a copy of this?

15 A. Yes, because if I read it from there you won't hear  
16 me.

17 MR. DUCHARME: May I approach him, your Honor?

18 THE COURT: Yes, that's fine.

19 MR. DUCHARME: I'll give him a hard copy.

20 THE COURT: Detective, the copy you are looking  
21 at, is that the same identical one to the one on the  
22 screen that you have been discussing thus far?

23 THE WITNESS: Yes.

24 I recognize both of them to be indicated as  
25 government Exhibit 105.

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1 THE COURT: Very good.

2 When you read it, if anything is different,  
3 notwithstanding the exhibit stamp, let us know.

4 THE WITNESS: Absolutely, sir.

5 THE COURT: All right.

6 BY MR. DUCHARME:

7 Q. Detective, directing your attention to halfway  
8 through the first paragraph, you see where my pen is on  
9 the screen, the line beginning I pledge.

10 A. Yes.

11 Q. Can you please read that portion of  
12 government Exhibit 105 into the record.

13 A. Yes:

14 I pledge my loyalty allegiance and fidelity to  
15 Mujahideen of Al-Qaa'idah in the Arabian Peninsula and its  
16 leaders, Shaykh Abu Baseer Nasir Al-Wuhayshi and Shaykh  
17 Ayman Al-Zawahiri, Hafidhahum Allah. May Allah accept  
18 this from me and may he allow me to fight in his cause  
19 'til the day that I leave this dunya, to him ta 'ala I  
20 belong and to him I return. Ameen thumma Ameen.

21 Q. I want to go through a couple of the terms if you are  
22 familiar with them.

23 Are you familiar with the term Mujahideen here?

24 A. Yes.

25 Q. And generally what does that mean?

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1 A. A person that migrates to fight.

2 Q. What about dunya, are you familiar with that term?

3 A. Dunya is I guess the life within here at the lowest  
4 form being -- allow people to return, it's a derogatory  
5 term for earth.

6 Q. Turning to the next paragraph, the short paragraph  
7 below that.

8 Could you please read into the record beginning  
9 with that paragraph, starting Akhi.

10 A. Yes:

11 Akhi. There are no limitations to what I'm  
12 willing to do when I get there. Bi idhnillah. I can tell  
13 you that considering my background, I could and would love  
14 to help out with Inspire Magazine or al-Malahem Media to  
15 help call Muslims in the west to Jihad. So if you ask me  
16 what I would like to do, besides fighting, it would be  
17 that. If the ameer feels like I can be of use elsewhere,  
18 then whatever it is I'm willing to do it. As long as I'm  
19 fighting the enemies of Allah.

20 Q. And with respect to the term ameer, do you know what  
21 that word means?

22 A. Yes, the ameer would be the leader.

23 Q. The leader?

24 A. Yes.

25 Q. Finally, just the third short paragraph here in

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1 government Exhibit 105, could you please just read that  
2 into the record.

3 A. Akhi, al habeeb, I want to emphasize that whatever  
4 the ameer tells me to do once I get there I will do it.  
5 If they call on me to do something, whatever it is or  
6 wherever it is and they feel like I would be best man for  
7 that job, I will do it. Wa billahi tawfeeq. So Wallahi,  
8 there are no limitations, nothing that I won't do bi  
9 idnillah.

10 Q. Detective, directing your attention to the top of the  
11 e-mail, just to make clear for the record, what was the  
12 date that this e-mail was sent?

13 A. December 26, 2012.

14 Q. Thank you.

15 Detective, approximately when was the defendant  
16 arrested in this case?

17 A. January 21st, 2013.

18 Q. Shortly before his arrest, was there a final meeting  
19 with the undercover?

20 A. Yes, there was.

21 Q. Was there a video recording made of that event?

22 A. Yes, there was.

23 Q. Turning your attention to government Exhibit 103  
24 that's in evidence, the January 18th video recording, are  
25 you familiar with that recording?

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1 A. Yes.

2 Q. Very generally, could you just explain for the court  
3 to set some background what is the setting of the January  
4 18, 2013 conversation between the defendant and the  
5 undercover.

6 A. The conversation between the defendant and the  
7 undercover is the undercover has acknowledged the  
8 intentions of Mr. Kaliebe.

9 And at that point he's telling him you do not  
10 have to go forward with this. No one will be angry at  
11 you. You know, I will take all responsibility if anybody  
12 is angry with you in any way.

13 And basically he's telling him you don't have to  
14 go through with this -- what you have already told me what  
15 you would like to do.

16 Q. And is government Exhibit 103 a portion of that video  
17 recorded conversation?

18 A. Yes, it is.

19 MR. DUCHARME: At this time, with the court's  
20 permission, I'll play government Exhibit 103.

21 (Video played.)

22 (Video stopped.)

23 MR. DUCHARME: Your Honor, if I may.

24 I want to cue up the one that has the  
25 transcript.

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1 (There was a pause in the proceedings.)

2 (Video played.)

3 (Video stopped.)

4 BY MR. DUCHARME:

5 Q. Detective, do you know who Abu Mas al Zaraqawi is?

6 A. Yes.

7 Q. Who is that.

8 A. The leader of Al-Qaeda.

9 (Video played.)

10 (Video stopped.)

11 BY MR. DUCHARME:

12 Q. And, Detective, do you have an understanding of who  
13 Shaykh Anwar al Awlaki and Shaykh Usama are?

14 A. Yes.

15 Q. Who are they?

16 A. Anwar Awlaki is one of the leaders of AQAP and Shaykh  
17 Usama refers to Shaykh Usama bin Laden, also deceased.

18 (Video played.)

19 (Video stopped.)

20 BY MR. DUCHARME:

21 Q. Now, Detective, after this recorded meeting with UC  
22 1, did the JTTF's investigation continue?

23 A. Yes, it did.

24 Q. And shortly after that, was the defendant arrested?

25 A. Yes, he was.

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1 Q. And what were the circumstances of the defendant's  
2 arrest, generally?

3 A. The defendant was actually going to leave the country  
4 and when he actually committed that act that he had  
5 actually purchased the ticket to go overseas and he was at  
6 the airport and he had passed through -- over into the  
7 thoroughfare to actually board the flight going past TSA  
8 and he had given his ticket showing which plane he was  
9 going to board with the final destination, that's when he  
10 was taken into custody.

11 Q. What was his final destination going to be?

12 A. His final destination was Oman.

13 Q. And where is Oman in relation to Yemen?

14 A. It's the southeast border, it borders on with Yemen.

15 Q. Now, after the defendant was arrested, Detective, was  
16 there a period of time during which the defendant provided  
17 information to law enforcement?

18 A. Yes, there was.

19 Q. Generally, very generally, what types of information  
20 did he provide?

21 A. He provided information regarding other ongoing  
22 investigations.

23 Q. Did the JTTF continue to investigate, for example,  
24 Ali Zea who you testified about earlier?

25 A. Yes.

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1 Q. Did the JTTF seek the defendant's assistance in  
2 further investigations?

3 A. Yes, they did.

4 Q. And for a period of time, how did he respond?

5 A. He was cooperative.

6 Q. Approximately over what period of time was he  
7 cooperative?

8 A. He was cooperative up until May of the same year, up  
9 until 2013.

10 Q. May of 2013?

11 A. Yes.

12 Q. And he was arrested in January of 2013?

13 A. That's correct.

14 Q. And during the time he was speaking with  
15 investigators, did you have the opportunity to meet with  
16 him?

17 A. Yes, I did.

18 Q. How many times?

19 A. I met with him on one occasion.

20 Q. Under what circumstances did you meet with the  
21 defendant?

22 A. There was -- I had another investigation within the  
23 office pertaining to someone that he knew of.

24 So I was asking him about that.

25 Q. Just very generally, can you explain to the court

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1 what your personal interaction was like with the defendant  
2 during that time frame.

3 A. The first half of the meeting was very cooperative,  
4 with everything that I asked him he cooperated. He gave  
5 me honest answers, what I felt was honest.

6 Then later on in the interview I started  
7 questioning him about his knowledge in Islam and different  
8 things with Islam. At that point he started to shut down,  
9 and wasn't as cooperative.

10 (Continued on next page.)

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1 Q And at some point did he ultimately decide to no  
2 longer meet with investigators?

3 A Yes. In fact after that meeting he had requested the  
4 investigators that I no longer come back to speak with  
5 him.

6 Q After that point, did the government investigation of  
7 Ali Zea continue?

8 A Yes.

9 Q Ultimately what happened to Ali Zea?

10 A He was arrested.

11 Q Approximately when?

12 A He was arrested May 22, 2013 -- I'm sorry,  
13 October 18, 2013.

14 MR. DUCHARME: Thank you very much, detective.  
15 I have no further questions.

16 THE COURT: Thank you.

17 CROSS-EXAMINATION

18 BY MR. LAPINTA:

19 THE COURT: It's going to be two minutes.

20 MR. DUCHARME: Sure, your Honor.

21 THE COURT: Forgive the interruption.

22 MR. DUCHARME: Just let me know when you are  
23 ready.

24 THE COURT: Yes.

25 Mr. LaPinta, cross-examination.

**Almodovar - Cross/LaPinta**

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1 MR. LAPINTA: Thank you, your Honor.

2 Q Good afternoon, Detective Almodovar.

3 A Good afternoon.

4 Q My name is Anthony LaPinta. I'll be asking you a  
5 series of questions on cross-examination.

6 I would like for you to answer my questions by  
7 using an either "yes" response, "no" response or explain  
8 that you cannot answer yes or no.

9 Do you understand that?

10 A Yes.

11 Q Are you willing to follow those instructions?

12 A Yes.

13 Q Sir, before taking the witness stand this afternoon,  
14 what documents did you review to prepare?

15 A I looked at several of the FBI documents, 302s, some  
16 ECs? I looked at some videos.

17 Q Anything else?

18 A I think that's it.

19 Q The 302s that you reviewed, they were 302s --  
20 withdrawn. Were they your own 302s?

21 A No.

22 Q Did you produce any 302s in this investigation  
23 involving Mr. Kaliebe?

24 A There is one that my name is on, yes.

25 Q And so you reviewed other 302s as well; is that

**Almodovar - Cross/LaPinta**

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1 right?

2 A That's correct -- I'm sorry, yes.

3 Q Would they be other agents in your task force that  
4 was involved in Mr. Kaliebe's cooperation?

5 A Yes.

6 Q Were there any 302s that encompassed any other  
7 component of this investigation besides cooperation that  
8 you reviewed?

9 A 302s during the investigation?

10 Q Besides cooperation?

11 A There were some other 302s, yes.

12 MR. LAPINTA: Your Honor, I would then demand  
13 for the production of those 302s. I only have the 302s  
14 relative to the cooperation that are involved here. If  
15 this witness reviewed other agents' 302s, I'm certainly  
16 entitled to them and I would request their production.

17 MR. DUCHARME: Your Honor, we can take a short  
18 break if you would like and make sure that Mr. LaPinta has  
19 access to everything. You know --

20 THE COURT: That's what we'll do.

21 MR. DUCHARME: -- That is discoverable.

22 MR. LAPINTA: I'm willing to go forward for the  
23 sake of convenience, and if you want to take a break  
24 mid-afternoon, I probably may be a half hour, 45 minutes  
25 with this witness. Then make we can take that break and

**Almodovar - Cross/LaPinta**

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1 perhaps address it during the break so we don't have to  
2 come back.

3 MR. DUCHARME: Agreeable.

4 THE COURT: That's what we'll do.

5 Q Detective, were you involved in this particular  
6 investigation at the point where the task force identified  
7 Mr. Kaliebe as a source of information regarding  
8 terrorism?

9 A When he started to cooperate?

10 Q No. During the course of the cooperation when the  
11 task force first identified him as a subject to the  
12 investigator, were you involved in that?

13 A As the case investigator, no.

14 Q Were you involved in the team of investigators made  
15 up of task force representatives that investigated  
16 Mr. Kaliebe at that juncture?

17 A No, I was not.

18 Q But as you sit here today, would you agree that you  
19 have information relative to what transpired when he first  
20 became known to the task force?

21 Yes or no?

22 A Yes.

23 Q And yet you found that information out by speaking to  
24 other task force members and reading 302s and other  
25 documents, is that fair to say?

Almodovar - Cross/LaPinta

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1 A Yes.

2 Q So do you feel qualified in discussing -- withdrawn.

3 Would you agree that you feel qualified in  
4 discussing the aspect of the investigation as to when  
5 Mr. Kaliebe was first identified as a target of the  
6 investigation?

7 A As an investigator, I feel competent enough to.

8 Q All right. Now, when you first -- when the task  
9 force first identified Mr. Kaliebe, was there any  
10 investigative measures completed to understand and know  
11 his background?

12 A I don't have knowledge of that.

13 Q When the task force identified him as a source of  
14 investigation, did they take any steps to investigate his  
15 background?

16 A When he started cooperating or right from the  
17 beginning?

18 Q No, when he was the target of the investigation  
19 initially.

20 A In my cases, I can speak about my case. When I'm  
21 investigating someone --

22 Q Stop. I'm talking about Mr. Kaliebe's investigation.  
23 It's either yes, you know, or no, you don't know, or you  
24 can't answer the question yes or no.

25 Are you aware whether the task force completed

**Almodovar - Cross/LaPinta**

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1 any background investigation of Mr. Kaliebe when they  
2 first identified him as a subject of the investigation?

3 A As an investigator, we have to comply with the  
4 Attorney General's guidelines. So as an investigator,  
5 that's how I do my investigation and there's a proper  
6 background.

7 Q So the answer is yes or no?

8 A As an investigator, yes, I do a proper background  
9 check.

10 Q Was there one done in this case?

11 A I have no knowledge of that.

12 Q Now, did there come a point in time after Mr. Kaliebe  
13 was being investigated, that they began, the task force  
14 began to learn about him?

15 A Yes.

16 Q And would you agree that as time went forward and he  
17 interacted more and more with UC-1, you learned more and  
18 more about him, correct, meaning the task force, not you  
19 particularly?

20 A Yes.

21 Q And did you come to learn, the task force, that  
22 Mr. Kaliebe was dealing with a lot of personal issues at  
23 this time during his interactions with the UC-1?

24 A I was not brought up to speed with personal issues  
25 with him.

**Almodovar - Cross/LaPinta**

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1 Q So as you sit here today, as a government witness,  
2 you are not aware of any information about Mr. Kaliebe's  
3 personal background of what he was going through  
4 personally at the time he was dealing with UC-1, is that  
5 fair to say?

6 A I am aware now, yes.

7 Q Are you aware now that he was going through some  
8 pretty tough family circumstances then? Yes or no?

9 A I'm aware now, yes.

10 Q And are you aware now that he was dealing with some  
11 pretty serious health issues at the same time?

12 A I do not know what level.

13 Q Well, do you know now that he was dealing with some  
14 health issues then?

15 A I was aware of health issues.

16 Q Did any member of your task force during his dealings  
17 with UC-1 investigate other people to find out more about  
18 Mr. Kaliebe?

19 A I'm sorry. Can you repeat that?

20 Q Sure.

21 Did anyone in the task force meet with or  
22 investigate other people in an attempt to find out more  
23 about his background?

24 A I'm sure they did.

25 Q What measures did they do to find out more about him?

**Almodovar - Cross/LaPinta**

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1 A Some of those investigations may still be open.

2 Q Okay. But it's fair to say that you undertook, the  
3 task force did, undertook to take certain steps to find  
4 out more about him as a person and for regarding his  
5 personal issues that were going on at the time, is that  
6 fair to say?

7 A The investigation would be more focused on his  
8 intentions and his criminal activity.

9 Q This UC-1 that you were working with, this was a  
10 male, correct?

11 A Yes.

12 Q Approximately age 27 at the time he first met with  
13 Mr. Kaliebe, correct?

14 A I'm not aware of his exact age.

15 Q Could you say he was around the age of 27? Yes or  
16 no?

17 A Yes.

18 Q And at the time that Mr. Kaliebe first met UC-1, were  
19 you aware that he was 16 years old. Yes or no?

20 A That he was --

21 Q If you could answer it yes or no, or if you can't,  
22 tell me.

23 A I don't know his exact age.

24 Q All right. But would you agree that he was  
25 approximately ten years younger than UC-1?

**Almodovar - Cross/LaPinta**

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1 A Yes, I know he was under 18. Yes.

2 Q Are you aware that UC-1 and Mr. Kaliebe first met  
3 when they were both on a social field trip doing white  
4 water rafting?

5 A No.

6 Q Are you aware that after they first met, that as time  
7 moved forward, their relationship got closer and closer?

8 A Yes.

9 Q And are you aware whether UC-1 was given any  
10 particular instructions by your task force to try to  
11 become as close as possible with Mr. Kaliebe? Yes or no?

12 A I'm not exactly sure with what we would call his  
13 handler or case agents actually instructed him to do  
14 specifically.

15 Q But now that you are here at this juncture,  
16 testifying in this hearing, based upon what you've  
17 learned, are you aware that there were certain  
18 instructions given to UC-1 to develop a close bond with  
19 Mr. Kaliebe?

20 A To get closer to know him, yes.

21 Q And that would be a close friendship, would you  
22 agree?

23 A Yes.

24 Q To develop a close bond, would you agree?

25 A What would appear to be, yes.

**Almodovar - Cross/LaPinta**

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1 Q And to develop as best as possible as trusting of a  
2 relationship as he could. Would you agree with that?

3 A What would appear to be, yes.

4 Q Do you know that in the course of the investigation,  
5 that UC-1 represented himself to be a member of Al Qaeda?

6 A Yes.

7 Q Are you aware that UC-1 told Mr. Kaliebe that not  
8 only was he a member of Al Qaeda but he was also a  
9 recruiter of Al Qaeda. Do you know that?

10 A No, I'm not sure about that.

11 Q Do you know whether UC-1 told Mr. Kaliebe that he had  
12 family in Yemen?

13 A Yes, I'm aware.

14 Q And a friend in Yemen?

15 A Yes.

16 Q And other people in Yemen that he knew were also  
17 members of Al Qaeda, correct?

18 A Yes.

19 Q You were shown a picture of Mr. Kaliebe and Ali Zea,  
20 correct?

21 A Yes.

22 Q And Mr. DuCharme told you there were codefendants; is  
23 that right?

24 A Yes.

25 Q Do you know whether they were charged together in the

**Almodovar - Cross/LaPinta**

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1 same accusatory instrument?

2 A They were not.

3 Q Do you know whether they were part and parcel of the  
4 same investigation?

5 A Yes.

6 Q Now, you are familiar with the Ali Zea investigation,  
7 aren't you?

8 A Somewhat, yes.

9 Q Yes. Mr. Zea is now approximately 27 years old; is  
10 that right?

11 A Correct.

12 Q And you know some of his background?

13 A Yes.

14 Q Do you know that he's a high school graduate, right?

15 A I'm not exactly sure of his education.

16 Q What about a college graduate. Are you aware that  
17 he's a college graduate?

18 A I know he was attending college.

19 Q Suffolk Community College, yes?

20 A I'm not exactly sure.

21 Q Okay. And that he maintained a job as well. Do you  
22 know that?

23 A Okay.

24 Q That Mr. Zea lived with his family at the time with  
25 his interactions with UC-1?

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1 A Yes.

2 Q And that he had been actively speaking about his  
3 affiliations or desires to go to Yemen for around two  
4 years before Mr. Kaliebe even entered the picture; is that  
5 right?

6 A I'm not exactly sure of the time frame.

7 Q Are you aware that the photograph that was shown to  
8 you from July 14th of 2012, that was when Mr. Kaliebe was  
9 16 years old. Are you aware of that?

10 A If I do the math, yes.

11 Q And that when your cooperative first engaged in this  
12 in April of 2012, he just turned 17 years old. Are you  
13 aware of that?

14 A Yes, sir.

15 Q And there came a point in time during your direct  
16 examination when you explained that UC-1 was aware of  
17 Mr. Kaliebe's intention to travel overseas, correct?

18 Do you remember that?

19 A Yes.

20 Q Would you agree, detective, that at that point in  
21 time when you became aware of his intentions to travel,  
22 that UC-1 deliberately and specifically would discuss  
23 those plans with Mr. Kaliebe?

24 A Yes.

25 Q And that he did so on a regular basis, correct?

Almodovar - Cross/LaPinta

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1 A Yes.

2 Q And the conversations were about various aspects of  
3 his travel to Yemen, correct?

4 A Yes.

5 Q Are you aware that UC-1 actually instructed  
6 Mr. Kaliebe how to actually travel to Yemen? Are you  
7 aware of that?

8 A No.

9 Q No. Are you aware that UC-1 instructed Mr. Kaliebe  
10 how to obtain a passport?

11 A No.

12 Q Did you have an occasion to listen to the wires  
13 involved in this case, the recordings?

14 A I did listen to some recordings.

15 Q Sorry?

16 A I did listen to some recordings.

17 Q Did you listen to all the wires?

18 A No, I did not.

19 Q Did you listen to the wires only played in this  
20 courtroom as part of this hearing, or were there others  
21 that you listened to?

22 A To the best of my knowledge, these are the only ones  
23 I listened to.

24 Q Are you aware, sir, that UC-1 instructed Mr. Kaliebe  
25 how to obtain a visa?

**Almodovar - Cross/LaPinta**

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1 A No, I'm not.

2 Q Are you aware that UC-1 instructed Mr. Kaliebe how to  
3 buy an airline ticket?

4 A No.

5 Q Are you aware that UC-1 instructed Mr. Kaliebe how to  
6 save money for this trip?

7 A No.

8 Q Are you aware that UC-1 was actually holding  
9 Mr. Kaliebe's money to buy an airline ticket? Are you  
10 aware of that?

11 A No, I have no knowledge.

12 MR. LAPINTA: Your Honor, may I approach the  
13 witness, please?

14 THE COURT: Yes.

15 MR. LAPINTA: May we have this marked?

16 Actually, may I ask Ms. Lundy what the next  
17 defendant's exhibits are?

18 THE CLERK: J.

19 MR. LAPINTA: Sorry?

20 THE CLERK: J.

21 MR. LAPINTA: Your Honor, I would like to mark  
22 this exhibit as Defendant's Exhibit J with the government  
23 consent.

24 THE COURT: To be received into evidence or just  
25 for identification?

**Almodovar - Cross/LaPinta**

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1 MR. LAPINTA: In evidence, please.

2 THE COURT: As I understand the government  
3 consents.

4 MR. DURHAM: We do, your Honor. Mr. LaPinta and  
5 I had a conversation this morning where he's provided  
6 this. These look like they are accurate. The only thing  
7 I said, I want to go back and look at the context of each  
8 of these citations to ensure there is not anything else  
9 that should be there that is not.

10 With that caveat, we have no objection to them  
11 going into evidence now being used for the purpose of  
12 today's hearing, and if we want to supplement the record  
13 later, Mr. LaPinta will work that out.

14 MR. LAPINTA: So the record is clear, your  
15 Honor, Defendant's Exhibit J is a transcript of the  
16 recordings that I attempted to play in open court in our  
17 last hearing date but obviously it didn't sound too clear.

18 THE COURT: So J goes in. And Mr. Durham has  
19 indicated, it's my understanding that the government and  
20 the defense have agreed that when the government reviews  
21 what goes in with respect to Defendant's J, if there is  
22 other information that should go in, that they will make  
23 the application. And then the question is would  
24 additional information be received on consent or would it  
25 just be framed after listening to argument by counsel?

**Almodovar - Cross/LaPinta**

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1 MR. LAPINTA: I'll go to the extent they want to  
2 expand because I've read it over so thoroughly I'm  
3 convinced this is the most germane portion.

4 THE COURT: I understand. I just want to make  
5 sure I understand the ground rules.

6 MR. LAPINTA: I have a copy for the Court. Do  
7 you wish me to hand it up?

8 THE COURT: I would.

9 Q Detective Almodovar, before you is a transcript of  
10 various recordings made with the UC-1 and Mr. Kaliebe.  
11 Most of the recordings are actually government  
12 transcriptions of the proceedings.

13 I please direct you to number 7 which would be  
14 on the sixth page of that exhibit. This is number 7 --  
15 number 7 is 15, September 12, 2012, 5:45 minutes. And it  
16 read as follows:

17 UC-1: How much your mom gave you for shopping?

18 Mr. Kaliebe: 100.

19 Operative: 100?

20 Mr. Kaliebe: Yeah.

21 Then you and him went shopping.

22 Yeah.

23 Where did you shop at?

24 We went to J.C. Penny.

25 Continuing, on number 8.

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1 And after that, after that, you just go  
2 straight, just get the ticket on your own, you know.

3 Mr. Kaliebe: Right.

4 Operative: Or on line, you know, or the travel  
5 agency, you know.

6 I don't know.

7 Operative: I think you should start looking  
8 into that stuff, you know.

9 Mr. Kaliebe: Ticket.

10 Next page.

11 Operative: Especially --

12 Unidentifiable.

13 How long the passport takes and the visa.

14 Unintelligible.

15 Yemen, you know.

16 So when you talk to a brother, we know who you  
17 are talking about.

18 Mr. Kaliebe: Yeah.

19 Operative: How much money we need. How much  
20 that. How much that?"

21 Did you ever hear those tapes before?

22 A No.

23 Q If I told you that the discussion was centered around  
24 saving money and buying airline tickets and traveling to  
25 Yemen, is this the first time you would be aware of that?

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1 MR. DUCHARME: Objection.

2 THE COURT: In the exercise of my discretion  
3 I'll admit that. Having said that, though, the witness  
4 has said he's never heard that particular conversation.  
5 So going through what he doesn't know about a conversation  
6 he never heard, I'm not so sure it is a productive  
7 exercise. But if you want to give it a shot, go ahead.

8 MR. LAPINTA: Thank you, Judge. Turn to number  
9 13, please, detective.

10 Operative: Speaking about money, me and Omar,  
11 me and him were collecting extra money for --

12 Unintelligible.

13 We need a little more for me and for him and if  
14 you have anything extra that you want to add, just let us  
15 know.

16 Mr. Kaliebe: Anything. It could be ten bucks

17 Operative: Anything, it's up to you.

18 Mr. Kaliebe: You know the reward for it.

19 Zea: I don't have any money."

20 Are you aware of conversations in -- with the  
21 undercover about accumulating money to travel?

22 A No.

23 Q Detective, in the course of your knowledge of this  
24 investigation, would you agree that the operative's  
25 instructions were to facilitate Mr. Kaliebe's travel to

Almodovar - Cross/LaPinta

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1 Yemen?

2 A No, I'm not aware of that.

3 Q Sorry?

4 A No, I'm not aware of that.

5 Q Well, from what you've learned and what you've heard  
6 on your tapes and your 302s, would you agree with me that  
7 the operative's goal was to facilitate his travel  
8 together?

9 A No. As I testified earlier in cases, an undercover  
10 is brought into a case to figure out a person's true  
11 intentions.

12 Q And is it your testimony that the operative in this  
13 case did not facilitate that travel. Is that what you are  
14 saying?

15 A Facilitate?

16 Q Yes.

17 A I would say he's not doing anything on his own.

18 Q I'm sorry?

19 A No, he did not motivate the whole thing.

20 Q Well, are you using the word "motivate" and  
21 "facilitate" in the same manner?

22 THE COURT: I think that is argumentative. I  
23 would note parenthetically, of course I'm the trier of  
24 fact of this Fatico, and asking him about subjects he's  
25 not that familiar with and doesn't have any firsthand

**Almodovar - Cross/LaPinta**

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1 information, even though under Rule 11(d) as we know the  
2 rules of evidence do not apply. But again this does not  
3 apply.

4 MR. LAPINTA: I'll move on.

5 Q You heard some recordings earlier in this courtroom?

6 A Yes.

7 Q Do you know whether or not the recordings that were  
8 played here --

9 THE COURT: Forgive me. Before I said 11(d),  
10 it's 1102(d), so just so the record makes some sense, I'll  
11 clarify that.

12 Go ahead. Forgive the interruption.

13 Q The recordings that were played in open court here  
14 today, do you know whether those recordings were enhanced  
15 in any way to make that clearer and more audible?

16 A Background noise might be taken out.

17 Q Okay. And did you do that to all of the wires or  
18 just the ones that the government has played here?

19 A Normal practice, whichever ones are requested, those  
20 are the ones you would do that.

21 Q There was a portion of the recordings that were  
22 played here today when the term lone wolf terrorist was  
23 discussed. Do you remember that portion of the tape?

24 A Yes, I do.

25 Q And do you recall that portion of the tape

**Almodovar - Cross/LaPinta**

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1 Mr. Kaliebe saying clearly, no, we are not lone wolf  
2 terrorists? Do you remember that?

3 A Yes, sir.

4 Q You are not aware of any portion of the tapes, the  
5 recordings, the discussions or any other sources of  
6 information where Mr. Kaliebe had any intention of being a  
7 loan wolf terrorist, do you?

8 A No, in fact he explained what he would be charged  
9 with later on in the same video.

10 Q Conspiracy, right?

11 A Yes.

12 Q And you are aware that he was intending to board the  
13 plane to Yemen to fight in war with other militants,  
14 right?

15 A To Oman.

16 Q To fight in war with other militants, right?

17 A Yes.

18 Q Against soldiers, right?

19 A Who he considered to be occupiers or threats to  
20 Islam.

21 Q But the information that he gave to your operative  
22 was that they were military people, correct?

23 A I'm not sure of that.

24 Q The last video that was referenced in your testimony,  
25 was the last conversation, one of the last conversations

**Almodovar - Cross/LaPinta**

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1 that Mr. Kaliebe had with your operative, right?

2 A That's correct.

3 Q And obviously there was a dialogue back and forth  
4 where the operative is now trying to explain to  
5 Mr. Kaliebe that he doesn't have to go overseas, right?

6 A Yes.

7 Q Would you agree he was trying to dissuade him from  
8 going? Yes?

9 A He was just explaining to him that there are options.  
10 He did not have to go through with that.

11 Q So do you have any reservation in adopting the term  
12 "dissuade"? Was he dissuading him, in your opinion?

13 A I can't say either way.

14 Q But you are aware, aren't you, that for a two-year  
15 period before that recording, there were regular  
16 conversations about him traveling to Yemen, right?

17 A Yes.

18 Q And that was the first time in any of their dealings  
19 together, when he explained to Mr. Kaliebe that there were  
20 other options beside him traveling to Yemen, would you  
21 agree with that?

22 A I don't know if he had mentioned it earlier that  
23 there were other options.

24 Q You are not aware of that?

25 A I'm unaware if he did or not.

**Almodovar - Cross/LaPinta**

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1 Q Did you read any transcripts of these tapes beside  
2 the ones played in court?

3 A Yes.

4 Q How many did you read, approximately?

5 A Up to twenty, approximately.

6 Q Twenty days of transcripts or twenty particular  
7 segments of conversations?

8 A Approximately twenty different days or over 100.

9 Q There came a point in time after Mr. Kaliebe's arrest  
10 that he cooperated with your investigation, right?

11 A That's correct.

12 Q And that would be immediately upon his arrest,  
13 correct?

14 A His first cooperation.

15 Q Actually that is a yes or no, or you can't answer it  
16 yes.

17 Did he cooperate immediately after his arrest?

18 A My understanding, he invoked his right to counsel  
19 immediately.

20 Q Would you agree he cooperated with the assistance of  
21 his attorneys shortly after his arrest?

22 A Shortly after, yes.

23 Q And that his cooperation included over ten meetings  
24 with various agents from your task force, isn't that  
25 right?

**Almodovar - Cross/LaPinta**

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1 A I thought it was eight. Approximately eight.

2 Q And you attended one of the eight, right?

3 A That's correct.

4 Q And each meeting was hours, right?

5 A I'm not exactly sure, but I would say probably.

6 Q You read the 302s, didn't you?

7 A Yes.

8 Q Right. They weren't one page for each meeting?

9 A No.

10 Q They were actually very lengthy for each meeting?

11 A Some were more than others.

12 Q Isn't it a fair assumption based on the length of the  
13 302s and the facts of the 302s, that the meeting lasted  
14 for hours?

15 A Yes.

16 Q And that specific questions were asked at each and  
17 every meeting regarding Mr. Kaliebe's familiarity with  
18 subjects that you were investigating, right?

19 A Yes.

20 Q And he answered all of those questions for those  
21 approximate ten meetings, right?

22 A Yes, what I assumed to the best of his ability. Yes.

23 Q And during those meetings, you actually showed him  
24 photographs of people you were looking to investigate,  
25 correct?

**Almodovar - Cross/LaPinta**

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- 1 A Yes.
- 2 Q And he identified people in your photographs, right?
- 3 A Yes.
- 4 Q He was complying with you?
- 5 A Yes.
- 6 Q He was cooperative, right?
- 7 A Yes.
- 8 Q And he provided information to you from your
- 9 estimation to be truthful and accurate, correct?
- 10 A That would be correct.
- 11 Q There also came a point in time in the investigation
- 12 that he consented to forms to search his computer, his
- 13 Facebook account, e-mail account and his cell phones,
- 14 right?
- 15 A Correct.
- 16 Q He also did that voluntarily, didn't he?
- 17 A Yes.
- 18 Q Consensually, right?
- 19 A Correct.
- 20 Q And in good faith with you, right?
- 21 A Correct.
- 22 Q There were questions posed to him about whether
- 23 certain individuals were using public lockers. Do you
- 24 remember that?
- 25 A Not in particular.

Almodovar - Cross/LaPinta

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1 Q No?

2 A I don't recall that.

3 Q What about whether he was aware of certain  
4 individuals that possessed bomb-making ingredients. Do  
5 you remember that?

6 A I don't remember exactly but I do recall.

7 Q And he answered all those questions as well, right?

8 A Correct.

9 Q He was also asked to explain his various video chats  
10 with targets that you were investigating?

11 A Yes.

12 Q And he did so as well, right?

13 A Yes.

14 Q Other topics of investigation were other mosques on  
15 Long Island, right?

16 Yes?

17 A I'm not 100 percent.

18 Q And I'm most respectful of your answer and I will say  
19 in response to that, were there other mosques that you  
20 were investigating?

21 A We don't particularly investigate mosques.

22 Q Wasn't there topics of discussions involving other  
23 mosques?

24 A People attending different places.

25 Q Okay. At certain mosques, right?

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1 A Individuals. Our investigations are based on  
2 individuals.

3 Q That were attending certain mosques.

4 THE COURT: This is getting argumentative.  
5 Sustained.

6 MR. LAPINTA: Yes, your Honor.

7 Q Certain of the targets that you were investigating  
8 owned retail stores and he provided information about that  
9 as well?

10 A Correct. Yes.

11 (Continued.)

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1 BY MR. LAPINTA: (cont'd)

2 Q He also was able to explain to you various Facebook  
3 accounts of people you were investigating, correct?

4 A I'm not aware of that.

5 Q Not 302s that you read?

6 A He might have mentioned it.

7 Q And there came a point in time when the cooperation  
8 ended, right?

9 A That's correct.

10 Q And when it ended, he explained that previous to his  
11 decision, he had spoken to some people at the MDC about  
12 cooperators? Didn't he tell you that?

13 A He said that he spoke with other inmates.

14 Q And that other inmates had said to him and encouraged  
15 him not to cooperate because they said that cooperators  
16 don't do too well in prison, right?

17 A Yes.

18 Q You remember him telling you that when explaining why  
19 he wasn't cooperating, correct? I mean --

20 A I wasn't there.

21 Q Meaning you, meaning your task force?

22 A Yes, it was documented. Yes.

23 Q And thereafter an arrest was made of Mr. Zayed?

24 A Several months later; yes.

25 Q And is it fair to say that based on some of the

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1 information that Mr. Kaliebe provided to you, that  
2 assisted you in the Zayed investigation, didn't it?

3 A A limited of that, yes, it did.

4 Q And I believe that you said that his cooperation  
5 lasted over a four-month period, right?

6 A From January to May.

7 Q Five months?

8 A Approximately.

9 MR. LAPINTA: I have nothing further.

10 Q Thank you very much for your time.

11 A You are welcome.

12 THE COURT: Thank you, Mr. LaPinta.

13 MR. DU CHARME: Judge, my suggestion, if now is  
14 a natural break, I will discuss with defense counsel any  
15 outstanding discovery requests and, of course, we will  
16 make available any information that we are obligated.  
17 Then, if there is additional information, he is welcome,  
18 from the government point of view, to provide it,  
19 otherwise, I don't believe we will have redirect.

20 THE COURT: We will take the afternoon recess,  
21 so recess until 25 of 4:00, and see where we are at that  
22 point.

23 (A recess was taken.)

24 THE COURT: All be seated please.

25 Mr. LaPinta, I understand that the government

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1 has furnished to you the 302s that were the subject of  
2 your concern.

3 MR. LaPinta: Yes. I'm most appreciative of  
4 them doing the legwork. I thank them. They have shown me  
5 the 302. There's not anything I see as relevant requiring  
6 this witness to retake the stand.

7 THE COURT: All right. So this witness can be  
8 excused.

9 Is he outside? Is he gone?

10 MR. DU CHARME: He is outside. I told him to  
11 stick around in case things went in an unpredictable  
12 direction.

13 THE COURT: We are all set so he will be  
14 excused.

15 I also understand, Mr. LaPinta, that you may  
16 have a rebuttal witness.

17 MR. LaPinta: Very short rebuttal witness.

18 THE COURT: That I assume will conclude the  
19 testimony. And I understand things can change and that's  
20 not a problem. We have the time to do this.

21 I also understand that Ms. Lundy provided you  
22 with a time and date that meets with the satisfaction of  
23 the government as well as the defense and also dovetails  
24 with the Court's schedule and that date is August 2 at  
25 1:30.

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1 Is that satisfactory to both sides?

2 MR. LaPinta: Yes.

3 MR. DU CHARME: Yes.

4 THE COURT: We will continue this matter on that  
5 date. Thank you.

6 Have a good day now.

7 (Pause)

8 THE COURT: Is there an additional matter we  
9 should put on the record?

10 MR. DURHAM: There is.

11 During one of the breaks a member of the media  
12 approached the government team and requested copies of the  
13 recordings that were played in court today, government  
14 Exhibits] 101, 102 and 103. They are now a matter of  
15 public record. We don't see any reason to oppose or any  
16 basis to oppose that request. Subject to the Court's  
17 approval, we will provide a copy of the exhibits to the  
18 member of the media.

19 THE COURT: Mr. LaPinta?

20 MR. LaPinta: Battling the constitutional right,  
21 I will object for the sake of privacy and I will object  
22 and leave it at that.

23 THE COURT: I think I need a little more  
24 specificity to address the objection. It would seem to me  
25 they were played in open court. They could have

1 transcribed or endeavored to transcribe what was said.  
2 Seems to me it is part of the public record. I don't  
3 believe there is anything on any of those tapes that  
4 pertain to a 5K1 situation.

5 So if that's true, it would seem to me that over  
6 the objection of the defense -- if there is anything  
7 further, I will be happy to hear you.

8 MR. LaPinta: Judge, I will reluctantly agree  
9 because I know I'm dead against the law here. I  
10 understand the point. I will consent.

11 THE COURT: Mr. Durham, in answer to your  
12 question, the procedure you outlined seems appropriate.

13 MR. DURHAM: Your Honor, I misspoke. It's three  
14 recordings as well as an e-mail; government Exhibit 105.  
15 That e-mail is a similar category, entered into evidence  
16 on the screen. I don't see a basis to oppose that  
17 request.

18 THE COURT: 105 is the e-mail which is --

19 MR. DURHAM: Not 104.

20 THE COURT: Why don't I ask the government to  
21 spell out exactly what they are.

22 MR. DURHAM: Government Exhibit 101, 102 and 103  
23 which are the three recordings played, two of them were  
24 audio, one was the video. And 105 is the e-mail  
25 correspondence between the defendant and undercover number

2.

THE COURT: They are the items that will be released subject to the discussion we just had.

MR. DURHAM: Yes, your Honor. That was requested today.

THE COURT: Thank you, everyone.

MR. LaPinta: One last point. I handed the Court up a copy of Exhibit J in evidence. The copy I gave you actually has some of my notes on it by mistake. I furnished Ms. Lundy a fresh, unaltered copy of it. I also furnished to the Court the actual recordings that we tried to play in court just for the sake of making a complete record and I labeled the CD J-1.

THE COURT: I see that in front of me.

I think we are all squared away. Thank you very much.

(Hearing adjourned until Tuesday, August 2, 2016 at 1:30 p.m.)

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